CORRES CONTROL
OUTGOING LTR NO

DOE ORDER # _____

94RF06010

Copies to all RPM (except Tim) staff + D.O.E Regions staff except Kerry WDB 5/31/94

EG&G ROCKY FLATS

EG&G ROCKY FLATS, INC
ROCKY FLATS PLANT, P O BOX 464 GOLDEN COLORADO 80402 0464 • (303) 966 7000

DIST	LTR	ENC
AMARAL, M E		
BERMAN, H S		
BRANCH, D B		
CARNIVAL, G J		
COPP, R D	X	X
DAVIS, J G		
ERRERA, D W		
HANNI, B J		
HARMAN, L K		
HEALY, T J		
HEDAHL, T		
HILBIG, J G		
HUTCHINS, N M		
KELL, R E		
KIRBY, W A		
KUESTER, A W		
MAHAFFEY, J W		
MANN, H P	X	X
MARX, G E		
McDONALD, M M		
McKENNA, F G		
MONTROSE, J K		
MORGAN, R V		
POTTER, G L		
RIZZUTO, V M		
RISING, T L		
SANDLIN, N B		
SETLOCK, G H		
STEWART, D L		
STIGER, S G	X	X
SULLIVAN, M T		
SWANSON, E R		
WILKINSON, R B		
WILSON, J M		
WYANT, R D		
Adams, K.	X	X
Bushy, W.S	X	X
Gould, L.	X	X
Nociarelli, L.S.	X	X
O'Rourke, T.P.	X	X
Swenson, P.W.	X	X
Ward, D.A	X	X
CORRES CONTROL	X	X
ADMN RECORD/080		
TRAFFIC		
ATS/T130G	X	X

CLASSIFICATION

UCNI		
UNCLASSIFIED	X	X
CONFIDENTIAL		
SECRET		

AUTHORIZED CLASSIFIER SIGNATURE
JN Courier, Jus
5/27/94
DATE

ADMIN REPLY TO RFP CC NO
21982 RF 94

ACTION ITEM STATUS
PARTIAL OPEN
CLOSED
FOR APPROVALS

ORG & TYPIST INITIALS
AHB

1/53

May 27, 1994

94-RF-06010

David A Brockman
Environmental Safety & Health
DOE, RFFO

TRANSMITTAL OF DRAFT LANGUAGE FOR THE ROCKY FLATS CLEANUP AGREEMENT - PWS-068-94

Ref a) M N Silverman ltr (03871) to H P Mann, Interagency Agreement Negotiations, May 17, 1994

b) H P Mann ltr (94-RF-05824) to M N Silverman, Interagency Agreement (IAG) Negotiations - Draft of the Modified Rocky Flats Cleanup Agreement (RFCA)

Enclosed please find five (5) copies of the following documents

Enclosure 1 is the Draft Rocky Flats Cleanup Agreement, Revision 0 (RFCA), described in References a and b This document represents a unified EG&G Rocky Flats, Inc (EG&G) position on the approach that should be taken in RFCA negotiations Specifically, it represents a new approach to regulatory interaction that will

- Clarify and streamline regulatory involvement in the remediation/closure process,
- Focus actions on early and meaningful risk reduction to human health and the environment;
- Allow increased flexibility in implementation of the agreement through a change control system and a "flexible" approach to enforceable milestones,
- Institute a controlled system for expanding the scope of the agreement, as the site mission progresses, and
- Provide a greater role for all stakeholders in work covered by the agreement

Revisions to the current Interagency Agreement (IAG) addressing funding, decontamination and decommissioning, and accelerated cleanup have been withheld from this revision, as instructed in Reference a Markers indicating potential locations for these future language sections are clearly placed in Enclosure 1 EG&G will supplement this draft RFCA language with additions in these areas, as guidance becomes available

Enclosure 2, Issues and Positions, RFCA Negotiation Strategy, is intended to explain the premise of specific provisions of the draft RFCA language It includes background information, positions, tactics, and references to specific areas of language modified

ADMIN RECORD

SW-A-004703

Enclosure 3 is comprised of three comparison tables, 1) Old IAG/New RFCA Table of Contents, 2) Old IAG Subject Mapped to New/Revised RFCA Subject, 3) How Agency Issues are Addressed In RFCA

These tables are intended to guide the reader through the draft language while referencing the issues corresponding to each chapter and part An additional document which will further address the justification for specific wording changes will be transmitted directly to the Department of Energy, Rocky Flats Field Office (DOE, RFFO) Chief Negotiator and his staff, as it becomes available.

EG&G and DOE, RFFO staff discussions have indicated that DOE will provide integrated comments to EG&G as they become available, with a goal of transmitting an RFFO approved draft to DOE, Headquarters, on or about June 14, 1994. EG&G will incorporate those comments as received, and continue to support the DOE Negotiation Team in all related matters.

Questions on these documents should be directed to P W Swenson, at extension 7211

Peter W Swenson
Transition Management

ahb

Orig and 1 cc - D A Brockman

Enclosures
As Stated

cc
J Roberson
R I Greenberg
M McBride

2

ROCKY FLATS CLEANUP AGREEMENT
DRAFT

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CHAPTER 1 GENERAL PROVISIONS

CHAPTER 2 REGULATORY AGENCY RESPONSIBILITIES

CHAPTER 3 COMMON PROVISIONS

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REVIEWED FOR CLASSIFICATION/UCNI
By JNC J N CONYERS UUU
Date 5/27/94

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VIII
and
THE STATE OF COLORADO

IN THE MATTER OF:	)	**FEDERAL FACILITY**
	)	**AGREEMENT AND**
	)	**CONSENT ORDER**
UNITED STATES DEPARTMENT	)	
OF ENERGY	)	**CERCLA XXXXXXX**
	)	**RCRA(3008(h))XXXXXXX**
	)	
ROCKY FLATS (COLORADO) SITE	)	**STATE OF COLORADO**
	)	**DOCKET # XXXXXXXX**

CHAPTER I
GENERAL PROVISIONS

Based on the information available to the Parties on the effective date of this FEDERAL FACILITY AGREEMENT AND CONSENT ORDER (the Rocky Flats Cleanup Agreement (RFCA)) and without trial or adjudication of any issues of fact or law, the Parties agree as follows

This Agreement is divided into three Chapters Chapter One contains statements of jurisdiction, parties, and the purposes of this Agreement, as well as general introductory information Chapter Two contains provisions addressing the role of the State of Colorado (State) when the State acts as the Lead Regulatory Agency for various Operable Units at the Site pursuant to its authority under the Resource Conservation and Recovery Act (RCRA), 42 U S C §§ 6901 et seq , and the Colorado Hazardous Waste Act (CHWA), §§ 25-15-101, et seq C R S, EPA's role as Lead Regulatory Agency for various Operable Units at the Site, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (CERCLA), 42 U S C § 9601 et seq, and provides the mechanism for integration of EPA and State responsibilities pursuant to CERCLA, RCRA and CHWA through the Lead/Support Regulatory Agency concept, and provides the mechanism for resolving disputes over regulatory conflicts in this context Chapter three contains common provisions All Chapters shall be construed as a whole, subject to Part 38 (Severability) Nothing in this Agreement shall be construed to change the jurisdictional authorities of the Parties Titles to Parts and Chapters of this Agreement are for descriptive purposes only

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PART I JURISDICTION

A. The United States Environmental Protection Agency, Region VIII (EPA), enters this Agreement pursuant to section 120(e) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U S C § 9620(e), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub L 99-499 [hereinafter jointly referred to as CERCLA], and sections 6001, 3008(h), and 3004(u) and (v) of the Resource Conservation and Recovery Act (RCRA), 42 U S C §§ 6961, 6928(h), 6924(u) and (v), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), Public Law 98-616 [hereinafter jointly referred to as RCRA] and Executive Order 12580

B The State enters into this Agreement pursuant to delegated authority under RCRA 49 FR 4136, Oct 19, 1984 The Colorado Department of Health (CDH) is the State agency designated by the CHWA, section 25-15-301(1) C R S (1989) to implement and enforce the provisions of RCRA and CHWA

C The State of Colorado (the State), enters into this Agreement pursuant to sections 107, 120(f), 121, and 310 of CERCLA, 42 U S C §§ 9607, 9620, and 9810, § 3006 of RCRA, 42 U S C §§ 6926 and CHWA, section 25-15-301(1) C R S (1989) Portions of this Agreement and of the Statement of Work that relate to RCRA and CHWA are a Compliance Order on Consent issued by the State pursuant to § 25-15-308(2), C R S

D The United States Department of Energy (DOE) enters into this Agreement pursuant to section 120(e) of CERCLA 42 U S C §§ 9620 (e), sections 6001, 3008(h), and 3004(u) and (v) of RCRA 42 U S C §§ 6961, 6921 (h), 6928 (u)and (v), the National Environmental Policy Act (NEPA), 42 U S C § 4321, Executive Order 12580, and the Atomic Energy Act of 1954, as amended (AEA), 42 U S C § 2011 et seq

E The activities undertaken pursuant to this Agreement shall be consistent with CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C F R Part 280, Federal Register Vol 55, No 46, at 8666 (March 8, 1990) (NCP) If the NCP or any other statute or regulation pertinent to this Agreement is amended subsequent to the date of execution of this Agreement, any modifications to this Agreement made necessary by such amendments shall be incorporated by modification into this Agreement, and other modifications related to such amendments shall be subject to further negotiations

Any work currently being conducted pursuant to the 1991 Agreement shall be incorporated into the requirements of this Agreement and shall become enforceable parts hereof

PART 2 PARTIES AND ROLE OF DOE CONTRACTORS

A. The Parties to this Agreement are EPA, the State, and DOE

B DOE shall provide a copy of this Agreement and relevant attachments to its prime contractors DOE is responsible for and assumes all liability for costs of CERCLA response actions or corrective actions required due to actions of its contractors A copy of this Agreement shall be made available to all other contractors and subcontractors retained to perform work under this Agreement DOE shall provide notice of this Agreement to any successor in interest prior to any transfer of ownership or operation, and the provisions of this Agreement shall be binding on any successors in interest

S

C DOE shall notify EPA and the State of the identity and work scope of each of its prime contractors and their subcontractors to be used in carrying out the terms of this Agreement in advance of their involvement in such work Upon request, DOE shall also provide the identity and work scope of any lower tier subcontractors performing work under this Agreement DOE shall be responsible for ensuring that all contractors, employees, agents, consultants, firms, and other persons or entities acting on behalf of DOE with respect to matters included herein, will comply with the terms of this Agreement DOE remains obligated by this Agreement regardless of whether it carries out the terms through agents, contractors, operators, and/or consultants

D Notwithstanding the preceding paragraph, DOE is obligated to comply with every requirement of this Agreement

PART 3 STATEMENT OF PURPOSE

A. On the effective date of this Agreement as established pursuant to Part 46 (Effective Date) of the Agreement, the 1991 Federal Facility Agreement and Consent Order CERCLA VIII-91-03 RCRA (3008(h)) VII-91-07 and State of Colorado Docket number 91-01-22-01, shall terminate and be replaced with this Agreement by consensus of the Parties The 1991 Agreement required that DOE conduct RI/FSs and conduct Facility Investigations and/or closure activities for RCRA corrective action at the Site The Parties have determined that the 1991 Agreement should be terminated and replaced by this Agreement for the following reasons

1 The 1991 Agreement does not recognize the changes to the Rocky Flats mission in which Special Nuclear Material (SNM) operations will be limited to those that provide for safe interim storage and the processing of wastes and residues resulting from SNM operations, and the intention of DOE to place buildings under the control of this agreement when they have been determined to be surplus

2 Parties recognize that administrative efficiencies that can be instituted based on experience gained during the execution of the 1991 Agreement that will result in a substantial acceleration of cleanup work at Rocky Flats This acceleration of cleanup activity will ultimately represent the best interests of all parties, and the taxpayers of the United States

3 The 1991 Agreement was based on certain assumptions regarding the scope of work, the scope of needed investigations and the ability of DOE to mobilize resources to carry out the cleanup These assumptions have been reviewed and improved in the development of this agreement In addition, experience gained by the parties during execution of the 1991 Agreement indicates that greater emphasis should be placed on a continuous maintenance of the project baseline based on emerging information

B The general purposes of this Agreement are to

1 Ensure that parties work together in a cooperative spirit that facilitates the earliest possible completion of cleanup of the Rocky Flats Site, and which maximizes the effectiveness of moneys expended to that end

2 Ensure that the environmental impacts associated with past and present activities at the Site will continue to be thoroughly investigated and that appropriate response action is taken and completed as necessary to protect the public health, welfare, and environment

3 Coordinate a review of the final remedial/corrective actions by the appropriate Federal and State natural resources trustees in order to assure that the final remedial/corrective actions will minimize potential impacts to natural resources while still meeting minimum cleanup standards

4 Establish a procedural framework and schedule for developing, implementing, and monitoring appropriate response actions at the Site in accordance with CERCLA, RCRA, and CHWA, implementing regulations of these statutes, including the NCP, and CERCLA, CHWA, and RCRA guidance and policy

5 Provide a framework for permitting RCRA Treatment, Storage, and Disposal Units (TSDs), promote an orderly, effective investigation and cleanup of contamination at the Site, and avoid litigation between the Parties

6 Ensure compliance with RCRA and CHWA, including requirements covering permitting, corrective action, closure, and post-closure care

7 Reduce risks to the site workers and the public as expeditiously as possible through the cleanup process, within the confines of acceptable standards, funding, and regulatory requirements The parties jointly acknowledge the importance of streamlining the decision process as much as possible to achieve meaningful risk reduction

8 Seek ways to accelerate cleanup actions and eliminate unnecessary tasks and reviews, by requiring that all parties to the agreement work together, within each party's statutory role, while fully involving other stakeholders as required by law and good practice

9 Establish the Agreement as a "living" document, which will evolve as the cleanup proceeds, recognizing that priorities of specific tasks and schedules will change as the cleanup progresses, due to emerging information on site conditions, and risk priorities

10 Provide the flexibility to incorporate other site activities, such as final decontamination and decommissioning tasks in the agreement, at such time as all parties agree that those activities are imminent for major process buildings

11 Create a "bias for action" by establishing a framework for human health and environmental risk reduction through removal actions or other means of expedited response

C Specifically, the purposes of this Agreement are to

1 Identify Interim Measures/Interim Remedial Actions (IM/IRAs), if any which are appropriate at the Site prior to the implementation of final remedial actions for the Site IM/IRA alternatives shall be

identified and proposed as early as possible prior to selection of final IM/IRAs by EPA and the State, consistent with Part 12, paragraph C This process is designed to promote cooperation among the Parties in identifying IM/IRA alternatives prior to selection of final IM/IRAs

2 Identify any additional TSD Units that require permits, establish schedules to complete DOE's Part B permit application for such Units in accordance with the Statement of Work (SOW), which is attachment 2 to this agreement, identify TSD Units that will undergo closure, close such TSD Units in accordance with State-approved closure plans, hereinafter called "Work Description Documents" and other laws and regulations, require post-closure care when necessary in accordance with post-closure permits or approved plans and other laws and regulations, and coordinate closure with any interconnected corrective or remedial action at the Site

3 Establish requirements for the performance of RCRA Facility Investigation/Remedial Investigation (RFI/RI) for each Operable Unit (OU) at the Site to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release or threatened release of hazardous substances, pollutants, contaminants, hazardous waste or constituents at the Site, and to establish requirements for the performance of a Feasibility Study/Corrective Measures Study (FS/CMS) for each OU at the Site to identify, evaluate, and select alternatives for the appropriate remedial/corrective action(s) to prevent, mitigate, or abate the release or threatened release of hazardous substances, pollutants, contaminants, hazardous waste or constituents at the Site in accordance with CERCLA, RCRA, and CHWA.

4 Identify the nature, objective, and schedule of response actions to be taken at the Site Response actions at the Site shall attain that degree of cleanup of hazardous substances, pollutants, or contaminants mandated by CERCLA.

5 Implement the selected IM/IRAs and final remedial/corrective actions in accordance with CERCLA, RCRA, and CHWA.

6 Assure compliance with Federal and State hazardous waste laws and regulations for matters covered by this Agreement

7 Describe the roles and responsibilities of the Parties

8 Describe and list the applicable or relevant and appropriate legal requirements for remedial action(s)

9 Provide for continued operation and maintenance of the selected remedial/corrective action(s)

10 Establish criteria by which surplus DOE facilities at Rocky Flats i e , those determined by DOE to have no further beneficial use to the DOE mission, will fall under the scope of this Agreement

11 Ensure early and meaningful public involvement in the implementation of this Agreement and in planning efforts conducted by DOE to determine future Site use

12 Provide for interactive community involvement in the initiation, development and selection of remedial actions to be undertaken at Rocky Flats, including timely review of applicable data, reports, and action plans developed for the site

PART 4 STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

A. The Parties intend to integrate into this Agreement DOE's CERCLA response obligations and CHWA and RCRA closure and corrective action obligations which relate to the release(s) of hazardous substances, contaminants, pollutants, hazardous wastes, and hazardous constituents covered by this Agreement Therefore, the Parties intend that compliance with activities covered by this Agreement will be deemed to achieve compliance with CERCLA, 42 U S C § 9601 et seq , to satisfy the corrective action requirements of sections 3004(u) and (v) of RCRA, 42 U S C § 6924(u) and (v), for a RCRA permit, and section 3008(h), 42 U S C § 6928(h), for interim status facilities, the closure and corrective action requirements of CHWA, and to meet or exceed all applicable or relevant and appropriate Federal and State laws and regulations, to the extent required by section 121 of CERCLA, 42 U S C § 9621

B Operable Units (OUs) at the Rocky Flats Site have been classified as either 1) State Lead Regulatory Agency OUs that the State will address under RCRA and CHWA primarily, but shall also address CERCLA requirements, or 2) EPA Lead Regulatory Agency OUs that EPA shall address primarily under CERCLA, but shall also address RCRA and CHWA requirements Chapter 2 of this Agreement sets forth the State's responsibilities as Lead Regulatory Agency DOE's obligations to obtain TSD permits, to close TSD Units, and otherwise comply with applicable RCRA and CHWA requirements Chapter 2 also sets forth EPA's responsibilities as Lead Regulatory Agency and DOE's obligations to satisfy CERCLA. Whenever there is a difference of opinion as to actions that are required for work on an OU, or whether appropriate RCRA or CERCLA considerations are being applied, the parties will use the dispute resolution process outlined in Part 21 to assure timely resolution of the differing opinions

C On November 2, 1984, EPA authorized the State to implement CHWA in lieu of the base RCRA Program implemented by EPA. On July 14, 1989, EPA authorized the State to implement, inter alia, the corrective action provisions of HSWA pursuant to section 3006 of RCRA. EPA will administer those provisions of Subtitle C of RCRA for which the State is not authorized

D When Corrective Action regulations are promulgated and become effective, the Parties agree to amend the SOW as necessary to incorporate such regulatory requirements Prior to such amendment, should any activity at an OU identified as a State lead reach the corrective action stage, DOE and the State will utilize the CERCLA remedial action process

E Based upon the foregoing, the Parties intend that any remedial action/corrective action selected, implemented, and completed under this Agreement shall be deemed by the Parties to be protective of human health and the environment such that remediation of releases covered by this Agreement shall obviate the need for further action outside the scope of this Agreement on those same OUs or individual sites Parties also agree that any remedial action/corrective action selected will minimize damage to the environment

G

PART 5 DEFINITIONS

THIS PART WILL NEED TO BE REVISED BASED ON POLICY DECISIONS MADE ON ACCELERATED CLEANUP, D&D, AND FULL FUNDING

A. Except as noted below or otherwise explicitly stated, the definitions provided in CERCLA, RCRA, CHWA, and their implementing regulations, as appropriate, shall control the meaning of the terms used in this Agreement If there is inconsistency in any definition in CERCLA, RCRA, or CHWA, the definitions in CERCLA shall apply

In addition

B "Active Units" shall mean TSD units as defined under RCRA/CHWA and herein contained in the current project baseline, where work has been deferred due to conflicts with the current site mission

C "Additional Work" within the context of this Agreement shall mean any new or different work outside 1) the agreed upon SOW and 2) any subsequent Work Description Documents incorporated into this Agreement Additional work will be reviewed and acted upon in accordance with Part 24 (Change Control Process)

D "Administrative Record" shall mean the compilation of documents which establishes the basis for the selection of CERCLA response actions for each OU at the Site, required pursuant to Part 36 (Public Participation) of this Agreement, the SOW incorporated into this Agreement as Attachment 2, and section 113(k)(1) of CERCLA. The Administrative Record requirements shall apply to all OUs at the Site

E "Agreement", "Rocky Flats Cleanup Agreement", or "RFCA" shall mean this document and shall include all Submittals, Attachments, Addenda, Amendments, and Modifications to this document All such Submittals, Attachments, Addenda, Amendments, and Modifications shall be incorporated into and become an enforceable part of this Agreement

F "Authorized representative" shall include a Party's contractors or agents acting in a specifically designated or defined capacity, including in an advisory capacity

G "CERCLA," shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U S C § 9601 et seq , as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub L 99-499, and the NCP

H "Colorado Hazardous Waste Act (CHWA)" shall mean §§ 25 -15-101 et seq , C R.S (1982) as amended, and its implementing regulations

I "Consultation," as that term is used anywhere in this Agreement to describe EPA's obligation to consult with the State, shall include, but not be limited to, reviewing any State comments and recommendations, advising the State of EPA's proposed position or determination, giving in writing its reasons for disagreeing with any comments or recommendations by the State, and, if requested, meeting with the State to attempt to resolve differences before announcing its position or determination Where the term is used to describe the State's

obligations to consult with EPA, the same obligations shall apply Time taken for the consultation of the EPA and State will be done within the time constraints in this agreement for the review of documents, submittals, or other specified decision time-limits

J "Corrective Action" (CA) shall mean the RCRA term for the cleaning up of releases of hazardous waste or hazardous constituents at treatment, storage, or disposal facilities subject to Subtitle C of RCRA.

K "Corrective Action Decision" (CAD) shall mean the RCRA term for the decision by the State selecting a corrective measure alternative or alternatives to remedy environmental concerns at a Site Consideration will be given to health risks, environmental effects and other pertinent factors The selecting agency shall use technical, human health, and environmental criteria to justify the remedy selection

L "Corrective Measures Study" (CMS) shall mean the RCRA term for the study through which the owner/operator of a facility identifies and evaluates appropriate corrective measures and submits them to the regulatory agency

M "Days" shall mean calendar days unless business days are specified Any submittal or Written Statement of Dispute that, under the terms of this Agreement, would be due on a Saturday, Sunday, State of Colorado, or Federal holiday shall be due on the following business day

N "Decontamination and Decommissioning" (D&D) - this definition will be provided later

O "Economic Development" shall mean activities conducted by DOE and its contractors at Rocky Flats which are intended to convert facilities to beneficial use through commercialization, privatization, and/or conversion to self-supporting business uses, as appropriate

P "Enforceable Milestone" shall mean those milestones that are established in conjunction with the budget process to be used by EPA and the State to measure DOE's work progress

Q "Full Funding" - this definition will be provided later

R "Individual Hazardous Substance Site (site)" shall mean individual locations where hazardous substances have come to be located at a discrete area within the larger "Site"

S "Interim Measure" (IM) shall mean the RCRA term for corrective actions, generally of short term, that may be taken at any time during the RFI/CMS process, to respond to immediate threats, such as actual or potential exposure to hazardous waste or constituents, drinking water contamination, threats of fire and explosion, and other situations posing similar threats

T "Interim Remedial Action" (IRA) shall mean the CERCLA term for an expedited response action done in accordance with remedial action authorities to abate an actual or potential threat to public health, welfare, or the environment at or from the Site

U "Lead Regulatory Agency" shall mean that regulatory agency (EPA or the State) which is assigned primary administrative and technical responsibility with respect to actions under this Agreement at a particular Operable Unit pursuant to the Statement of Work attached hereto as Attachment 2

V "Operable Unit" (OU) shall mean those groupings of individual hazardous substance sites into a single management area, as detailed in the Statement of Work attached herein as Attachment 2, and any additional groupings developed for the Site according to the procedures in Part 11 of this Agreement

W "Radioactive Mixed Waste" or "Mixed Waste" shall mean waste that contains both hazardous waste and material that DOE classifies as source, special nuclear, or byproduct material

X "RCRA" shall mean the Resource Conservation and Recovery Act, 42 U S C § 6901 et seq , as amended by the Hazardous and Solid Waste Amendments of 1984, and implementing regulations

Y "RCRA Facilities Investigation" (RFI) shall mean the RCRA term for an investigation conducted by the owner/operator of a facility to gather data sufficient to fully characterize the nature, extent, and rate of migration of contamination from releases identified at the facility

Z "RCRA Permit" shall mean a permit issued under RCRA and/or CHWA for treatment, storage, or disposal of hazardous waste

AA "Site" shall mean the federal enclave known as the Rocky Flats Site, including the buffer zone, as identified in the map attached hereto as Attachment 1 and shall also include all areas that are contaminated by hazardous substances, pollutants, or contaminants as those terms are defined in sections 101(14) and (33) of CERCLA, and/or any hazardous waste or hazardous constituents as those terms are defined in section 1004 of RCRA or CHWA from sources at the federal enclave

BB "Solid Waste Management Unit" (SWMU) shall mean an individual location on the Rocky Flats Site where solid waste, including hazardous waste, has or may have been placed, either planned or unplanned, as identified in the Statement of Work.

CC "State" shall mean the State of Colorado, its employees and authorized representatives

DD "Statement of Work" (SOW) shall mean an initial project description including, at a minimum, the elements listed in Attachment 2 to this Agreement The elements listed in the Statement of Work shall form the basis of any Work Description Document(s) developed for the Site

EE "Submittal" shall mean every document, report, schedule, deliverable, Work Description Document, or other item to be submitted to EPA and the State pursuant to this Agreement

FF "Transition" - this definition will be provided later

GG "TSD Unit" shall mean a treatment, storage, or disposal unit which is required to be permitted and/or closed pursuant to RCRA and CHWA requirements as determined in the Statement of Work

HH "U S DOE" or "DOE" shall mean the United States Department of Energy and/or any predecessor or successor agencies, their employees and authorized representatives

II "U S EPA" or "EPA" shall mean the United States Environmental Protection Agency, its employees and authorized representatives and successor agencies

JJ "Work Description Documents" shall mean the detailed plans developed to implement the Statement of Work incorporated into this Agreement and attached hereto This term shall encompass "workplans" as described in CERCLA and "closure plans" as described in RCRA, where RCRA considerations require the submittal of a closure plan for an OU

KK "Written Statement of Dispute" shall mean a written statement by a Party of its position with respect to any matter subject to dispute resolution pursuant to Part 21 of this Agreement, as appropriate, containing, at a minimum, the elements described in paragraph B of Part 21

PART 6 LEGAL BASES OF AGREEMENT

A. The following Parts 7, 8, and 9 constitute a summary of the Findings of Facts, Conclusions of Law, and Determinations upon which EPA and the State are relying to enter into this Agreement Nothing in the following Parts shall be considered admissions by DOE, nor shall they be used for any purpose other than to determine the jurisdictional basis of this Agreement

PART 7 FINDINGS OF FACT

A. The U S Department of Energy's Rocky Flats Site, (the Site or Rocky Flats), was acquired and established in 1951 by the U S Atomic Energy Commission (AEC), began operation in 1953 Rocky Flats is part of a nation-wide nuclear weapons research, development, and production complex The Management and Operating contractor from July 1975 through December 1989 was Rockwell International The present Management and Operating contractor is EG&G Prior to July 1975, the Dow Chemical Company was the operating contractor The Site, in existence since 1951, is the sole manufacturing plant in the country for production of plutonium components for nuclear weapons Both radioactive and nonradioactive wastes are generated in the process Storage and disposal of hazardous and radioactive wastes occurred at various locations within the boundaries of the federally-owned property

B The Site consists of 2319 hectares (6262 acres) of Federally owned land plus property beyond the boundaries that has become contaminated from sources within the boundaries of the Federally-owned property The Site is located approximately 26 kilometers (16 miles) northwest of downtown Denver and is almost equidistant from the cities of Boulder, Golden, and Arvada In addition to these cities, several large communities are located near the Site, including Louisville, Lafayette and Broomfield Major plant structures are located within a security-fenced area of 155 hectares (384 acres)

C The Site is directly upstream of two major metropolitan drinking water supplies (Great Western Reservoir and Standley Lake) and some groundwater drinking and agricultural water supply sources The 1980 population

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within a 50-mile radius of the Site, consisted of approximately 1 8 million people Several ranches are located within 10 miles of the Site They are operated to produce crops, raise beef cattle, supply milk, and/or breed and train horses

D Since establishment of the Site in 1951, materials defined as hazardous substances, pollutants, and contaminants by CERCLA, and materials defined as hazardous waste and hazardous constituents by RCRA and/or CHWA, have been produced and disposed or released at various locations at the Site, including, but not limited to, Treatment, Storage and Disposal Units (TSDs) Certain hazardous substances, contaminants, pollutants, hazardous wastes, and hazardous constituents have been detected and remain in groundwater, surface water, and soils at the Site Groundwater, soils, sediments, surface water, and air pathways provide routes for migration of hazardous substances, pollutants, contaminants, hazardous wastes, and hazardous constituents from the Site into the environment

E Between July 1, 1975, and December 31, 1989, DOE contracted with Rockwell to perform management services and operate the Site in support of DOE's production activities On January 1, 1990, the new operating contractor became EG & G

F Consistent with section 3010 of RCRA, 42 U S C § 6930, DOE and Rockwell notified EPA of hazardous waste activity at the Site on or about August 18, 1980 In this notification, DOE and Rockwell identified themselves as a generator and as a treatment, storage, and/or disposal facility of hazardous waste at the Site DOE and Rockwell also identified themselves as handling several hazardous wastes at the Site

G The Site was proposed for inclusion on the National Priorities List (NPL) on October 15, 1984, pursuant to section 105 of CERCLA, 42 U S C § 9605 and became final September 21, 1989

H On November 1, 1985, DOE and Rockwell filed Part A and B permit applications to both EPA and the State, identifying certain hazardous waste generation streams and processes

I On December 4, 1985, the State issued a Notice of Intent to deny DOE's Part B permit application on the grounds of incompleteness

J On July 31, 1986, DOE, the State, and EPA entered into a Compliance Agreement (1986 Compliance Agreement) which defined roles and established milestones for major environmental operations and corrective/remedial action investigations for the Site The 1986 Compliance Agreement also established requirements for compliance with CERCLA. Through this action, the 1986 Compliance Agreement established a specific strategy which allowed for management of high priority past disposal areas and low priority areas at the Site

K Pursuant to the 1986 Compliance Agreement, DOE identified approximately 178 individual hazardous substance sites and RCRA/CHWA regulated closure sites

L The 1986 Compliance Agreement also established roles and requirements for compliance with RCRA and CHWA through compliance with interim requirements and submittal of required permit applications and closure plans The major TSD units identified to date which may have impacted groundwater and soils include

the Solar Evaporation Surface Impoundments, the Present Landfill, the Old Process Waste Lines, the Building 443 Fuel Oil Tank, the West Spray Fields, and Outside Storage Areas [See Map, Attachment 1] DOE and Rockwell have submitted additional Work Description Documents which are being evaluated by EPA and the State to determine whether these areas are sources of groundwater and soils contamination

M Through the 27 specific tasks identified in the five schedules included in the 1986 Compliance Agreement, DOE and Rockwell identified over 2000 waste generation points

N The 1986 Compliance Agreement did not reflect the new requirements of SARA, including but not limited to the requirements governing Federal facilities pursuant to section 120 of CERCLA. Since the 1986 Compliance Agreement was issued, EPA's and the State's priorities for investigation of the Site has been clarified based on increased knowledge of the Site accrued from the ongoing investigation The priorities placed greater emphasis on those Operable Units that, based on information available, were known to pose the greatest risk to humans and the environment through actual or potential contact with wastes or contaminated soils, air, or water EPA and the State established criteria reflecting priorities for addressing both human health and environmental issues This necessitated the revision of the agreement in 1991

O In 1994, the site's mission changed from the production of nuclear weapons components to a mission that is dedicated to managing the waste and materials and to clean up and convert the Rocky Flats Site to beneficial use

P The 1994 Rocky Flats Mission includes operations in several major groups Those mission groups include ongoing nuclear operation, waste management operations, and environmental restoration operations Primarily, but not exclusively, under the AEA, RCRA, and CERCLA respectively In addition to these operations, various Site support operations are being conducted to support the Site infrastructure These operations include, but are not limited to operation of a sewage treatment plant and various surface water impoundments for the purpose of storm water runoff control

PART 8 CONCLUSIONS OF LAW

A. Based on the Findings of Fact set forth in Part 7 and the information available as of the date of execution of this Agreement, EPA and the State have determined the following

B DOE is a "person" as defined in section 101(21) of CERCLA, 42 U S C section 9601(21)

C The Rocky Flats Site is a "facility" as defined in section 101(9) of CERCLA, 42 U S C- section 9601(9)

D DOE is the "owner" of the Rocky Flats Site within the meaning of section 101(20)(A) of CERCLA, 42 U S C § 9601(20)(A)

E Plutonium, trichloroethylene (TCE), tetrachloroethylene (PCE), and 1,1,1, trichloroethane (TCA), inter alia, are "hazardous substances" as defined by section 101(14) of CERCLA, 42 U S C § 9601(14)(E) Attachment 4 lists all the hazardous substances found in significant quantities at the Site

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F The discharge, pouring, emitting, and/or disposing of these hazardous substances into the environment at the Rocky Flats Site constitutes a "release" as defined in section 101(22) of CERCLA, 42 U S C section 9601(22)

PART 9 DETERMINATIONS

A Based on the preceding Findings of Facts, Conclusions of Law, information available as of the date of execution of this Agreement, and the entire Administrative Record for this Site, EPA and the State have determined that

B The Rocky Flats Site is subject to the requirements of CERCLA

C Pursuant to § 6001 of RCRA, 42 U S C § 6961, DOE is subject to, and must comply with RCRA and CHWA

D DOE is a responsible party subject to liability pursuant to 42 U S C § 9607 of CERCLA, with respect to present and past releases at the Rocky Flats Site

E There is, or has been, a release of hazardous substances, pollutants, or contaminants into the environment from the Rocky Flats Site

F The Rocky Flats Site includes certain hazardous waste treatment, storage, and disposal units authorized to operate under section 3005(e) of RCRA, 42 U S C § 6925(e), and section 25-15-303(3) of CHWA, and is subject to the permit requirements of section 3005 of RCRA, and section 25-15-303 of CHWA

G Certain wastes and constituents at the Rocky Flats Site are hazardous wastes or hazardous constituents as defined by section 1004(5) of RCRA, 42 U S C § 6903(5), and 40 C F R Part 251 There are also hazardous wastes or hazardous constituents at the Rocky Flats Site within the meaning of section 25-15-101(9) of CHWA and 6 CCR 1007-3, Part 251

H The Rocky Flats Site constitutes a facility within the meaning of sections 3004 and 3005 of RCRA, 42 U S C §§ 6924 and 6925, and section 25-15-303 of CHWA

I DOE is the owner and co-operator, and EG&G is the co-operator, of the Rocky Flats hazardous waste management facility within the meaning of RCRA and CHWA

J There is, or has been, a release of hazardous waste and/or hazardous constituents into the environment from Solid Waste Management Units and disposal of hazardous waste within the meaning of section 3004(u) of RCRA, and CHWA

K The Submittals, actions, schedules, and other elements of work required or imposed by this Agreement are necessary to protect the public health, welfare, and the environment

CHAPTER TWO
REGULATORY AGENCY RESPONSIBILITIES

PART 10 RCRA/CERCLA INTERFACE

A. EPA and the State recognize that there is a potential for the two regulatory agencies to impose conflicting requirements upon DOE due to the complexities of the Rocky Flats Site and due to the overlap between the respective authorities of the two regulatory agencies Chapter Two establishes the procedures for remedial/corrective activities and the framework for EPA and the State to resolve disputes that may arise concerning their respective responsibilities EPA and the State agree to carry out their responsibilities so as to minimize the potential for any such conflicts

PART 11 LEAD REGULATORY AGENCY AND REGULATORY APPROACH DECISIONS

A. In order to minimize the potential for such conflicts, the Parties mutually agree to recognize a Lead Regulatory Agency and Support Regulatory Agency for each OU at the Site Lead Regulatory Agency and Support Regulatory Agency designations for each of the OUs identified as of the date of execution of this Agreement are specified in the Statement of Work The designation of a Lead and Support Regulatory Agency is for the purposes of administering this Agreement only, and shall not change the jurisdictional authorities of the Parties Where EPA is designated the Lead Regulatory Agency, the State shall be the Support Regulatory Agency for that OU Conversely, where the State is designated the Lead Regulatory Agency, EPA shall be the Support Regulatory Agency for that OU The designation of the State as Lead Regulatory Agency for any OU shall not constitute "authorization" of any of its actions pursuant to § 122(e)(6) of CERCLA. In the event the Parties cannot resolve lead/support agency issues, each shall reserve the right to enter into the dispute resolution process as described in Chapter 3, Part 21 of this Agreement Particular tasks related to the duties of EPA and the State are detailed in the Statement of Work, incorporated into this Agreement as Attachment 2, and shall be further delineated in the Work Description Document(s) to be submitted pursuant to Part 12 (Work To Be Performed Under Direction Of Lead And Support Regulatory Agencies) of this Agreement

B The redesignation of Lead Regulatory Agency, and designation of Lead Regulatory Agency for OUs and/or individual hazardous substance site(s) not identified as of the date of execution of this Agreement, shall be made through the Change Control Process (Part 24) EPA and the State have joint authority to determine the choice of Lead Regulatory Agency, and DOE shall not dispute such joint determinations, although EPA and the State agree to consider DOE's technical comments on the appropriateness of either other Party as the Lead or Support Regulatory Agency for a particular OU The Parties agree that absent any pertinent statutory amendment, EPA shall be designated the Lead Regulatory Agency for any additional OUs identified after the effective date of this Agreement and believed to contain purely radioactive substances Any Party may, as appropriate, request that the Lead Regulatory Agency designation for an OU be redesignated pursuant to the procedures of this Part

C If the EPA and State Project Coordinators cannot agree on the choice of Lead Regulatory Agency for a particular OU or individual hazardous substance site not identified as of the date of execution of the Agreement, then they shall resolve such disputes using the dispute resolution process in Part 21

D The Lead Regulatory Agency shall be responsible for primary review and sole approval of all Submittals received pursuant to the terms of this Agreement except as provided in Part 12 The Support Regulatory Agency shall provide comments on each Submittal to the Lead Regulatory Agency, which shall assemble and resolve those comments, and provide them to DOE The Lead Regulatory Agency shall be responsible for collection, integration, and transmittal of all review comments for all agencies within the time frame specified in Part 20 (Submission And Review Of Documents) The Lead Regulatory Agency shall transmit a copy of its consolidated comments to the Support Regulatory Agency at least seven business days prior to transmittal to DOE No informal guidance, suggestions, or comments by the State or EPA regarding reports, Work Description Documents, specifications, schedules, or any other Submittal shall satisfy the requirement for formal approval required by this Agreement

E When drafting comments and providing commentary on the Support Regulatory Agency's comments, the Lead Regulatory Agency shall render responses which are, to the maximum extent possible, consistent with CERCLA, RCRA, and CHWA. For those OUs for which the State is the Lead Regulatory Agency, it shall also take into account the technical requirements for the CERCLA RI/FS process, in order to minimize conflict and to promote efficient regulatory efforts at the Site For those OUs for which EPA is the Lead Regulatory Agency, it shall also take into account the technical requirements for the RCRA/CHWA process

F The Parties recognize the present regulatory jurisdictional dispute between DOE and the State concerning regulation of radioactive waste pursuant to RCRA and CHWA. In order to ensure that all contaminants are properly addressed at the Site, and to avoid any delays in the regulatory process and environmental cleanup due to this dispute, the Parties agree that for those OUs for which the State is the Lead Regulatory Agency, it shall address both the radioactive and hazardous components of hazardous substances The Parties acknowledge that EPA shall also, if necessary, impose requirements pursuant to CERCLA on the radioactive waste, the radioactive portion of the mixed waste, or both the hazardous and radioactive constituents of the mixed waste at issue if the radioactive portion can not be segregated out for that portion of the investigative or response process Should this become necessary, as agreed to by EPA and the State, EPA agrees to impose such requirements in a way that minimizes any interference with the State's role as the Lead Regulatory Agency for that OU

G In the event that EPA and the State cannot agree on a unified position on the remedial/corrective action, EPA retains final decision-making authority for CERCLA determinations, and the State retains final decision-making authority for CHWA determinations The Lead Regulatory Agency shall be responsible for negotiating a consistent Agency position should EPA and the State not agree This position shall be developed within the document review times specified in Part 20 (Submission and Review of Documents) If an agreed upon position cannot be reached within these time frames, the dispute resolution process in Part 21 will be invoked

PART 12 WORK TO BE PERFORMED UNDER DIRECTION OF LEAD AND SUPPORT REGULATORY AGENCIES

A DOE shall submit to the State or EPA for the approval by the Lead Regulatory Agency, according to the schedule established in the Statement of Work, Work Description Document(s) for those OUs identified in Attachment 2 Said Work Description Document(s) shall be based upon, and consistent with, the Statement of Work attached to this Agreement as Attachment 2 Said Work Description Document(s) shall provide a

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detailed description of the work to be performed in order to comply with the requirements of Attachment 2 and RCRA, CERCLA, and CHWA. After approval of each such Work Description Document, it shall be incorporated into this Agreement in subsequent Attachments and shall become an enforceable part hereof DOE shall perform the actions described in the Statement of Work and Work Description Document(s) in accordance with the requirements and schedules therein. EPA and the State agree to provide DOE with guidance and timely response within time frames specified in Part 20 of this Agreement, to requests for guidance to assist DOE in the performance of its work under this Agreement. Any dispute raised by DOE regarding Work Description Document approval shall be resolved through Part 21. A dispute between EPA and the State over Work Description Document approval shall also be resolved through the dispute resolution procedures of Part 21.

BASED ON WORK OF THE ACCELERATED CLEANUP WORKING GROUP, ADDITIONAL MATERIAL REGARDING REMOVAL MAY BE ADDED HERE.

B Paragraphs C through I below, provide summaries of categories of work required of DOE pursuant to this Agreement and the respective statutes it embodies. DOE shall perform the requirements of these paragraphs in accordance with pertinent guidance and policy as set forth in the Statement of Work and updated regularly through the Work Description Document update process. Detailed descriptions of the work described below are provided in the Statement of Work attached to this Agreement as Attachment 2. The designated Lead Regulatory Agency shall be responsible for coordination and development of guidance consistent between the Agencies for the work defined below.

C Interim Measures/Interim Remedial Actions. Interim Measures/Interim Remedial Actions (IM/IRAs) may be proposed by any of the three parties. DOE agrees that it shall develop and implement IMs/IRAs as required by EPA and the State. EPA and DOE shall jointly select the IRA in the IRA portion of the IM/IRA decision document. In the event that EPA does not agree with DOE's proposed selection of the IRA or that DOE fails to propose an IRA, EPA shall select the IRA, in accordance with applicable laws. The State shall select the IM in the IM portion of the IM/IRA decision document, except as provided in Section F of this Part. The IM/IRAs shall be consistent with the purposes set forth in Part 3 (Statement of Purpose) of this Agreement. All IM/IRAs shall be based on, and consistent with, the requirements for IM/IRAs detailed in the Statement of Work. IM/IRAs shall, to the greatest extent practicable, attain Applicable or Relevant and Appropriate Requirements (ARARs) and be consistent with and contribute to the efficient performance of final response actions consistent with section 121 of CERCLA. Any dispute raised by DOE concerning an IM/IRA shall be resolved pursuant to Part 21 (Resolution of Disputes). Any dispute between EPA and the State on the selection of an IM/IRA shall also be resolved through the dispute resolution procedures of Part 21.

D RCRA Facility Investigations/Remedial Investigations. DOE agrees it shall develop, implement, and report upon RCRA Facility Investigations/Remedial Investigations (RFI/RI) to investigate the nature and extent of contamination at the Site. RFI/RI shall be submitted in accordance with the requirements and the time schedules approved by the Lead Regulatory Agency.

E Feasibility, Studies/Corrective Measures Studies. DOE agrees to design, propose, undertake, and report upon Feasibility Studies/Corrective Measures Studies (FS/CMSs) to identify alternatives and a proposed selection

for remedial action/corrective action for OUs at the Site FS/CMSs shall be submitted in accordance with the requirements and time schedules approved by the Lead Regulatory Agency

F All OUs shall undergo the RFI/RI and FS/CMS process set forth Sections D and E above For OUs identified at the completion of the FS/CMS stage as containing purely radioactive substances, EPA (and DOE in accordance with its authority under § 120(e)(4) of CERCLA) shall issue a ROD If at the end of the FS/CMS process either (1) hazardous waste constituents are also identified to be present or, (2) federal statutory amendments expressly provide for State authority over radionuclides, then the State shall issue a CAD and the procedures of paragraphs H, I, J, L, and N shall apply However, if neither of the events in (1) or (2) of this paragraph occur, the State shall not issue a CAD, and only the CERCLA provisions of this Part shall apply to remedy selection at that OU

G Risk Assessment DOE shall conduct both a Comprehensive Risk Assessment of the Site and Specific OU Risk Assessments These risk assessments shall be conducted by a methodology that is agreed to by all Parties When completed, the risk assessments will be sent to the EPA and State for their review The EPA and State will jointly approve the Comprehensive Risk Assessment The Lead Regulatory Agency for a specific OU will be responsible for the approval of a Specific OU Risk Assessment

H Remedial and Corrective Actions/Proposed Plan DOE shall develop and submit to EPA or the State for review and comment, a draft Proposed Plan for Remedial/Corrective Action in accordance with the Lead/Support Regulatory Agency concept described in Parts 10, 11 and 12 of this Agreement and in accordance with the requirements and schedules set forth in the Statement of Work Upon incorporation of EPA and State comments, DOE shall release a final Proposed Plan for public comment in accordance with appropriate requirements For OUs where the State is Lead Regulatory Agency, the State will simultaneously issue a draft permit modification consistent with the final Proposed Plan in accordance with 6 C C R 1007-3, Part 100 60 For OUs where EPA is the Lead Regulatory Agency, permits will be required pursuant to the provisions in Part 14 of this Agreement

I For OUs where EPA is the Lead Regulatory Agency, DOE and EPA, in consultation with the State, shall select the remedial action for each OU, taking into consideration comments received during the final Proposed Plan comment period described in paragraph H above If DOE and EPA are unable to agree on the remedial action, Parties shall invoke the dispute resolution procedures of Part 21 For OUs where the State is the Lead Regulatory Agency, the State, in consultation with EPA, shall select the Corrective Action, except as provided in paragraph F, and shall prepare a CAD describing such decision

J This paragraph describes dispute resolution for disputes relating to selection of a corrective/remedial action at OUs for which the State is the Lead Regulatory Agency, as described in the attached Statement of Work For each of these OUs, the State shall issue a CAD EPA, as the Support Regulatory Agency for that OU, (and DOE, consistent with its authorities pursuant to section 120(e)(4) of CERCLA), shall issue a Record of Decision (ROD) for the remedial action portion of that OU Public comment on the final Proposed Plan shall be addressed in a responsiveness summary and be incorporated within the CAD/ROD, as appropriate The CAD/ROD shall constitute the Final Plan and permit modification Where all Parties agree on the corrective/remedial action as described in the CAD/ROD, the ROD portion of the CAD/ROD at a State lead OU shall be a concurrence ROD If EPA and the State disagree on the remedy for that particular OU, the

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dispute resolution procedures of Part 21 shall be invoked The CAD/ROD is a single document and the State as Lead Regulatory Agency shall assure that the ROD portion of the CAD is integrated into the final action If EPA and the State agree on the remedy selected in the CAD/ROD but DOE disagrees, the dispute resolution procedures of Part 21 shall be invoked

K This paragraph describes dispute resolution for disputes relating to selection of a remedial/corrective action for those OUs for which EPA is the Lead Regulatory Agency For each of these OUs, EPA (and DOE consistent with its authority pursuant to section 120(e)(4) of CERCLA) shall prepare a Record of Decision (ROD) based on the final Proposed Plan The State, as Support Regulatory Agency for that OU, except as provided in paragraph F, shall prepare a CAD Public comment on the final Proposed Plan shall be addressed in a responsiveness summary and be incorporated into the ROD/CAD, as appropriate The ROD/CAD shall constitute the Final Plan and permit modification Where all Parties agree on the remedial/corrective action for that OU, the CAD portion shall be a concurrence CAD If EPA and the State disagree on the remedy for that OU, the dispute resolution procedures of Part 21 The ROD/CAD is a single document and the EPA as Lead Regulatory Agency shall assure that the CAD portion of the ROD is integrated into the final action If EPA and the State agree on the remedy selected, but DOE disagrees, the dispute resolution procedures of Part 21 shall be invoked

L Consistent with EPA's responsibilities pursuant to section 120(g) of CERCLA, EPA (and DOE, to the extent required by section 120(e)(4)) shall prepare a ROD for those OUs for which the State is the Lead Regulatory Agency EPA agrees that its intent is to prepare a ROD consistent with the CAD, so long as the CAD is consistent with the requirements of CERCLA.

M For those OUs for which EPA is designated the Lead Regulatory Agency, and where preparation of a CAD by the State is appropriate, the State agrees that its intent is to prepare a CAD consistent with the ROD, so long as the ROD is consistent with RCRA and CHWA.

N Implementation of Remedial and Corrective Actions Following final selection for each OU of the remedial action by EPA (and DOE consistent with its authority pursuant to § 120(e)(4) of CERCLA), and final selection of the corrective action by the State, DOE shall design, propose, and submit a detailed plan for implementation of each selected remedial action and corrective action, including arrangements for long term operation and maintenance, according to the schedule and conditions set out in the Statement of Work and Work Description Document(s) developed according to the Statement of Work Following review and approval by the Lead Regulatory Agency for that OU according to the procedures referenced in Part 20 (Submission and Review of Documents), DOE shall implement the remedial action(s) and corrective action(s) in accordance with the requirements and time schedules in the Statement of Work and the approved Work Description Document(s)

PART 13 STATE AND EPA RESPONSIBILITIES

A The Parties agree that the State shall perform its responsibilities under this Agreement in accordance with the provisions of this chapter

B The Parties agree that EPA shall perform its responsibilities under this Agreement in accordance with the provisions of this chapter

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C Lead Regulatory Agencies designations for each OU are identified in Attachment 2 Additional OUs for which the State or EPA shall be the Lead Regulatory Agency shall be identified according to the procedures of Part 11 (Lead Regulatory Agency And Regulatory Approach Decisions) of this Agreement

PART 14 PERMITTING AND CLOSURE

A For OUs where the State is the Lead Regulatory Agency, DOE shall comply with RCRA and CHWA permit and closure requirements, including State-approved Work Description Documents, for OUs specifically identified for permitting or closure in the Statement of Work, and shall submit permit applications and Work Description Documents in accordance with the Statement of Work DOE shall implement all closures in accordance with the Statement of Work and approved Work Description Documents Closures under this Paragraph shall be regulated by the State under applicable law, but shall as necessary be coordinated with remedial action requirements of this Agreement

B The State shall process Work Description Documents, post-Work Description Documents, and permit applications in accordance with its applicable regulations Under the applicable portions of the Statement of Work attached to this Agreement, the State will make final written decisions or determinations regarding compliance with CHWA Disputes regarding these decisions or determinations shall be resolved utilizing the dispute resolution procedures of Part 21

C For OUs where EPA is the Lead Regulatory Agency, the Parties recognize that under section 121(e)(1) of CERCLA, portions of the response actions called for by this Agreement and conducted entirely on the Rocky Flats Site are exempted from the procedural requirement to obtain Federal, State, or local permits, when such response action is selected and carried out in compliance with Section § 121 of CERCLA Nonetheless, these actions must satisfy all the applicable or relevant and appropriate Federal and State standards, requirements, criteria, or limitations which would have been included in any such permit It is the understanding of the Parties that the statutory language is intended to avoid delay of on-Site response actions, due to procedural requirements of the permit process DOE agrees to seek and implement any required permit, for any operation or process, other than for portions of remedial/corrective actions which are both (1) exclusively limited to DOE's obligation to perform a remedial/corrective action in accordance with paragraph N of Part 12 and (2) conducted entirely on-Site

D During any appeal of any permit required to implement this Agreement, DOE shall continue to implement those portions of this Agreement which can be reasonably implemented pending final resolution of the permit issue(s)

PART 15 DELAY IN PERFORMANCE/STIPULATED PENALTIES

A. In the event that DOE fails to submit a primary document to EPA and the State pursuant to the appropriate timetable or deadline in accordance with the requirements of this Agreement, or fails to comply with a term or condition of this Agreement which relates to an interim or final remedial action, EPA may assess a stipulated penalty against DOE If EPA fails to assess a stipulated penalty against DOE, and the State believes it appropriate to assess one, the State may request of EPA that it do so In the case of a State request for

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issuance of a stipulated penalty by EPA, the matter may be referred to the DRC for resolution pursuant to Part 21 A stipulated penalty may be assessed from the date of receipt of a notice of violation as discussed below

B Stipulated penalties will be on a graded system The graded system will take into account the amount of control DOE has over the milestone, the effect on the environment and the effect on the total remediation of Rocky Flats under the RFCA that will occur as a result of the missed milestone Milestones that require policy decisions and develop the plan and criteria for the cleanup are typically not under the control of one party as policies and plans require agreement of all parties and stakeholders Therefore the risk of missing a milestone is far greater during the implementation phase of the RFCA. In addition, no fieldwork has started, so the potential impact to the environment is not changing, and the timing of a particular policy or plan does not have the impact on the total remediation program as much as the substance of that particular policy or plan Missed policy and decision milestones should have a maximum penalty of $300 per calendar day for the first 15 calendar days, $450 per day for the sixteenth day through the thirtieth calendar day, and $600 per calendar day thereafter The stipulated penalty shall begin to accrue upon receipt of notice of violation pursuant to paragraph E below

C The implementation phase of the RFCA is performed by DOE with greater control over the scheduled milestones and therefore the risk of missing the milestone is less than during the policy and planning phase Implementation takes place in the field which increases the possible impact on the environment Also the implementation and completion of the selected remediation will have direct impact on the total remediation of Rocky Flats Therefore, missed implementation phase milestones should have a maximum penalty of $1,000 per calendar day for the first 15 calendar days, $2,000 per day for the sixteenth day through the thirtieth calendar day, and $4,000 per calendar day thereafter The stipulated penalty shall begin to accrue upon receipt of notice of violation pursuant to paragraph E below

D A system of credits will be established to enable positive recognition for DOE schedule acceleration achievement One calendar day of credit will be accrued by DOE for each calendar day that a document or deliverable for an enforceable milestone submitted or completed in advance of the actual milestone These credits should equal one half the penalties described in paragraphs B and C, and can be applied to any stipulated penalty resulting from performance under this agreement

E Upon determining that DOE has failed in a manner set forth in paragraph A., above, EPA, after consultation with the State, shall so notify DOE in writing If the failure in question is not already subject to dispute resolution at the time such notice is received, DOE shall have 15 days after receipt of the notice to invoke dispute resolution on the question of whether the failure did in fact occur DOE may dispute whether the violation upon which the stipulated penalty is assessed has occurred, and the number of days that the violation has occurred, but shall not dispute the amount of stipulated penalties assessed DOE shall not be liable for the stipulated penalty assessed by EPA if the failure is determined, through the dispute resolution process, not to have occurred No assessment of a stipulated penalty shall be final until the conclusion of any dispute resolution procedures related to the assessment of the stipulated penalty

F The annual reports required by section 120(e)(5) of CERCLA, shall include, with respect to each final assessment of a stipulated penalty against DOE under this Agreement, each of the following

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1 The facility responsible for the failure
2 A statement of the facts and circumstances giving rise to the failure
3 A statement of any administrative or other action taken at the relevant facility, or a statement of why such measures were determined to be inappropriate
4 A statement of any additional action taken by or at the facility to prevent recurrence of the same type of failure
5 The total dollar amount of the stipulated penalty for the particular failure

G Stipulated penalties assessed pursuant to this Part shall be payable to the Hazardous Substances Response Trust Fund from funds authorized and appropriated for that specific purpose

H In no event shall this Part give rise to a stipulated penalty in excess of the amount set forth in section 109 of CERCLA

I This Part shall not affect DOE's ability to obtain an extension of a timetable, deadline, or schedule pursuant to Part 25 of this Agreement

J Nothing in this Part shall preclude EPA from pursuing any other remedy or sanction for DOE's failure to comply with this Agreement, after the appropriate dispute resolution process has concluded in accordance with paragraph F 5 of Part 16 (Enforceability)

K Nothing in this Agreement shall be construed to render any officer or employee of DOE personally liable for the payment of any stipulated penalty assessed pursuant to this Part

PART 16 ENFORCEABILITY

A The State, at OUs for which it is the Lead Regulatory Agency, shall conduct "close out sessions" with DOE (and EPA, if EPA so desires) at the conclusion of inspections of the Site related to implementation of this Agreement After an inspection has concluded, the State shall also send DOE a letter summarizing the State's initial assessment of the inspector's findings (a "follow-up letter") Any Party may invoke the provisions of Part 21 to resolve issues raised in the follow-up letter

B In the event DOE fails to comply with RCRA or CHWA provisions of this Agreement at OUs for which the State is the Lead Regulatory Agency, the State (or EPA, pursuant to its oversight authority specifically reserved in Part 18 (EPA Oversight)) may utilize the dispute resolution procedures of Part 21 prior to initiating administrative or judicial enforcement of this Agreement The State (or EPA) may initiate administrative or judicial enforcement at these OUs regardless of whether dispute resolution has been invoked For any RCRA or CHWA violations at EPA Lead OUs, the State agrees to employ the appropriate dispute resolution procedures prior to initiating any enforcement action Any Notice of Violation (NOV) or Compliance Order prepared by the State shall be reviewed by the Director of the Hazardous Materials and Waste Management Division, Colorado Department of Health, prior to issuance Notwithstanding paragraph E below, in enforcing the RCRA or CHWA provisions of this Agreement, the State or EPA may seek injunctive relief, specific performance, and penalties under CHWA or RCRA, and such sanctions or other relief as may be available

under other applicable law DOE agrees not to contest the State's (or EPA's) choice of enforcement authorities from those available under this Agreement

C Chapter Two and other RCRA and CHWA provisions of this Agreement including those related to statutory requirements, Submittals, regulations, permits, Work Description Documents, corrective action requirements, or record keeping and reporting shall be enforceable as an order by any person, including the State, pursuant to any rights existing under section 7002(a)(1)(A) of RCRA DOE agrees that the State or one of its agencies is a "person" within the meaning of section 7002(a) of RCRA

D The Parties agree that the RCRA and CHWA provisions set forth in this Agreement which address record keeping, reporting, Submittals, regulations, permits, Work Description Documents, or corrective action are statutory requirements and are thus enforceable by the Parties

E In the event (1) legislation is enacted that either (a) clarifies that RCRA Section 6001 waives the Federal government's sovereign immunity from State-imposed fines and penalties, or (b) waives such sovereign immunity or (2) the U S Supreme Court rules that RCRA § 6001 waives the federal government's sovereign immunity from State-imposed fines and penalties, the Parties agree to negotiate appropriate changes and modify the Agreement accordingly

F The Parties agree that

1 Upon the effective date of this Agreement, any standard, regulation, condition, requirement, or order which has become effective under CERCLA, and is incorporated into this Agreement is enforceable by any person pursuant to section 310 of CERCLA, and any violation of such standard, regulation, condition, requirement, or order will be subject to civil penalties under sections 310(c) and 109 of CERCLA

2 All timetables or deadlines associated with the development, implementation, and completion of the RFI/RI or the FS/CMS as specified in the Statement of Work shall be enforceable by any person pursuant to section 310 of CERCLA, and any violation of such timetables or deadlines will be subject to civil penalties under sections 310(c) and 109 of CERCLA

3 All terms and conditions of this Agreement which relate to interim measures, interim or final remedial actions, and/or corrective actions, including corresponding timetables, deadlines, or schedules and all work associated with the interim or final remedial actions, shall be enforceable by any person pursuant to section 310(c) of CERCLA, and any violation of such terms or conditions will be subject to civil penalties under sections 310(c) and 109 of CERCLA

4 Any final resolution of a dispute pursuant to this Agreement which establishes a term, condition, timetable, deadline, or schedule shall be enforceable by any person pursuant to section 310(c) of CERCLA, and any violation of such term, condition, timetable, deadline, or schedule will be subject to civil penalties under sections 310(c) and 109 of CERCLA

5 At EPA lead OUs, EPA may invoke dispute resolution prior to invoking its enforcement authorities pursuant to CERCLA or RCRA, including its RCRA oversight authorities However, EPA may initiate administrative or judicial enforcement at EPA lead OUs regardless of whether dispute resolution has been invoked by any Party At State lead OUs, EPA agrees to employ the appropriate dispute resolution prior to initiating any enforcement action

G Nothing in this Agreement shall be construed as authorizing any person to seek judicial review of any action or work where review is barred by any provision of CERCLA, including section 113(h) of CERCLA.

H The Parties agree that all Parties shall have the right to enforce the terms of this Agreement

PART 17 WORK STOPPAGE

A Any Party may request a work stoppage order, whether or not the particular work at issue is already the subject of dispute resolution, (1) if it believes a particular task or portion of work is inadequate or defective and likely to yield an adverse effect on human health or the environment as a result of such inadequacy or defect, or (2) with respect to work that it believes is likely to have a substantial adverse effect on the remedy/corrective action selection or implementation process, except that the work stoppage provisions of this Part shall not be invoked for any disagreement on the selection of remedy for that OU or an affected OU Such request shall be made in writing by the DRC member of the requesting Party, sent to the DRC members of all other Parties, and shall state the reason as to why stoppage is required

B Work affected by the stoppage will immediately be discontinued for up to five (5) business days pending determination by the DRC The DRC shall confer and meet as necessary during this period If the DRC does not concur in the need for work stoppage, work shall remain stopped pending elevation to the SEC Once the issue is referred to the SEC, the procedures of Part 21 shall apply, except that the Lead Regulatory Agency member of the SEC shall render its decision within five (5) business days To the extent practicable, prior notification shall be given to all other parties that a work stoppage request is forthcoming

C DOE's time periods for performance of the work subject to the work stoppage, as well as the time period for any other work dependent upon the work which was stopped, shall be extended pursuant to Part 25 (Extensions) of this Agreement for such period of time equivalent to the time in which work was stopped, or longer, as agreed to by the Parties

PART 18 EPA OVERSIGHT

A. Nothing in this Agreement shall be interpreted to affect EPA's responsibility for oversight of the State's exercise of its authorized RCRA authorities In carrying out any such oversight, EPA shall follow the statutory and regulatory procedures for such oversight and the provisions of this Agreement, including as appropriate, the dispute resolution process in Part 21

PART 19 RCRA/CERCLA RESERVATION OF RIGHTS

A. If EPA and the State are unable to resolve any dispute arising under this Agreement after utilizing the appropriate dispute resolution procedures, then each regulatory agency reserves its rights to impose its requirements directly on DOE, to defend the basis for those requirements, and to challenge the other regulatory agency's conflicting requirements

B EPA and the State each reserve any rights they may have to seek judicial review of a proposed decision or action taken with respect to corrective or remedial actions at any given OU on the grounds that either EPA or the State claims that such proposed decision or action conflicts with its respective laws governing protection of human health and/or the environment EPA and the State agree to utilize the dispute resolution procedures contained in Part 21 prior to seeking such judicial review It is the understanding of the Parties that this reservation is intended to provide for challenges where the adequacy of protection of human health and the environment or the means of achieving such protection is at issue

C Nothing in this Agreement shall be interpreted to affect EPA's authority under CERCLA to impose requirements necessary to protect public health and the environment EPA agrees to utilize the appropriate dispute resolution procedures prior to invoking this authority at State lead OUs

D Nothing in this Agreement shall be construed to excuse DOE from complying with the requirements of RCRA and CHWA where applicable, including closure and corrective action requirements as specified in the attached Statement of Work and subsequent Work Description Documents, subject to Part 19 (RCRA/CERCLA Reservation of Rights), and paragraph A of Part 14 (Permitting and Closure)

CHAPTER THREE
COMMON PROVISIONS

PART 20 SUBMISSION AND REVIEW OF DOCUMENTS

A The provisions of this Part establish the procedures that shall be used by the Parties to provide each other with appropriate notice, review, comment, and responses to comments regarding submitted documents, specified herein as either primary or secondary documents In accordance with Section 120 of CERCLA, 42 U S C § 9620, DOE will normally be responsible for issuing primary and secondary documents to EPA and/or the State As of the effective date of this Agreement, all draft and final documents for any deliverable identified herein or in the SOW shall be prepared, distributed, and subject to dispute in accordance with Paragraphs C through Y below Additional duties of the Lead and Support Regulatory Agency with respect to document review and transmittal of comments on OU-specific documents are contained in Part 11

B The designation of a document as "draft" or "final" is solely for purposes of consultation with EPA and the State in accordance with this Part Such designation does not affect the obligation of the Parties to issue documents, which may be referred to herein as "final", to the public for review and comment as appropriate and as required by law

C Primary documents include those documents that are major, discrete portions of required activities Primary documents shall initially be issued by DOE in draft, subject to review by EPA and/or the State Following receipt of comments on a particular draft primary document, DOE shall respond to the comments received and issue a draft final primary document subject to dispute resolution The draft final primary document shall become the final primary document either thirty (30) days after submittal of a draft final document, if dispute resolution is not invoked, unless otherwise agreed as provided in Paragraph R, or as modified by decision of the dispute resolution process The Lead/Support Regulatory Agencies, shall within the first fifteen (15) days of this thirty (30) day period for finalization of primary documents, identify to DOE any issues or comments in order to provide sufficient time for review, discussion, and modification of draft final documents, as necessary, to resolve potential disputes

D Secondary documents include those documents that are discrete portions of the primary documents and are typically input or feeder documents Secondary documents shall be issued by DOE in draft, subject to review and comment by EPA and/or the State Although DOE shall respond to comments received, the draft secondary documents may be finalized in the context of the corresponding draft final primary document to be issued A secondary document may be disputed at the time the corresponding draft primary document is issued

E As required by the SOW, DOE shall complete and transmit for each OU, as appropriate, the following primary documents to EPA and the State for review and comment in accordance with the provisions of this part

1 RFI/ RI Work Description Documents
2 RFI/ RI Reports

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3 CMS/FS Reports
4 Proposed Plan
5 IM/IRA Decision Documents
6 Corrective Action Decisions/Records of Decisions
7 Corrective/Remedial Design Plans
8 Corrective Design/Remedial Design Work Description Documents
9 Community Relation Plans
10 Sampling and Analysis Plan
11 Work Description Document to Implement Discharge Limits for Radionuclides
12 IM/IRA Implementation Document
13 Certification of Completion

F Only the draft final versions of the primary documents identified above shall be subject to dispute resolution DOE shall complete and transmit draft primary documents in accordance with the deadlines established in Table 6 of the SOW

G As required by the SOW, DOE shall complete and transmit the following applicable draft secondary documents to EPA and/or the State for review and comment in accordance with the provisions of this part

1 Periodic Progress Reports
2 Health & Safety Plan
3 Baseline Risk Assessment Technical Memoranda
4 CMS/FS Technical Memoranda
5 RFI/RI Work Description Document Technical Memoranda
6 Priority Proposal for OUs 3, 5, 6, 8, 12, 13, 14, 15, and 16
7 Responsiveness Summaries
8 Plan for Prevention of Contaminant Dispersion
9 Background Study Plan
10 Treatability Study Plan
11 Historical Release Report

H Although EPA and/or the State may comment on draft secondary documents listed above, such documents shall not be subject to dispute resolution except as provided in Paragraphs D and F Target dates are established for the completion and transmission of draft secondary documents in accordance with Table 6 of the SOW

I The Project Coordinators shall meet or confer approximately every thirty (30) days, except as otherwise agreed by the Parties, to review and discuss the progress of work being performed at RFS on the primary and secondary documents Prior to preparing any draft document specified Paragraphs E and G, the Project Coordinators shall meet to discuss the document in an effort to reach a common understanding, to the maximum extent practicable, with respect to the results to be presented in the draft documents Experience has shown that routine, staff-level discussions conducted throughout the document review

process is useful in avoiding major revisions to draft documents by resolving contentious issues early in the process This approach should be used whenever possible

J For those primary or secondary documents that consist of or include ARAR determinations, the Project Coordinators shall meet prior to the issuance of a draft document to identify and propose, to the best of their ability, all potential ARARs pertinent to the document being addressed Draft ARAR determinations shall be prepared by DOE in accordance with Section 121 (d) (2) of CERCLA, 42 U S C § 9621 (d) (2), the NCP, and pertinent guidance issued by the Lead Regulatory Agency which is not inconsistent with CERCLA and the NCP

K In identifying potential ARARs, the Parties recognize that actual ARARs can be identified only on a site-specific basis and that ARARs depend on the specific hazardous substances at a site, the particular actions proposed as a remedy, and the characteristics of a site The Parties recognize that ARAR identification is necessarily an iterative process and that potential ARARs must be re-examined throughout the RI/FS process until a ROD is issued

L DOE shall complete and transmit each draft primary document to EPA and/or the State on or before the corresponding deadline established for issuance of the document DOE shall complete and transmit each draft secondary document to EPA and/or the State in accordance with the target dates established for issuance of such documents according to the approved schedules within the appropriate Work Description Document(s) When the primary or secondary document is OU specific, DOE will transmit all primary and secondary documents to the Lead Regulatory Agency as determined in Part 11 (Lead Regulatory Agency Responsibilities) When the primary or secondary document is general in nature, DOE will transmit copies to both the State and EPA for their review and comment back to DOE

M Unless the Parties mutually agree to another time period, all draft primary documents shall be subject to a forty-five (45) day period for review and comment, and all draft secondary documents shall be subject to a fifteen (15) day period for review and comment Review of any document by EPA and/or the State may concern all aspects of the document (including completeness) and should include, but is not limited to, technical evaluation of any aspect of the document, and consistency with CERCLA, RCRA, CHWA, and NCP, and any pertinent guidance or policy promulgated by the Lead Regulatory Agency Comments by EPA and/or the State shall be provided with adequate specificity so that DOE may respond to the comments and, if appropriate, make changes to draft documents Comments shall refer to any pertinent sources of authority or references upon which the comments are based, and, upon request by DOE, EPA or the State shall provide a copy of the cited authority or reference In cases involving complex or unusually lengthy documents, EPA and/or the State may extend the review/comment period for an additional thirty (30) days by written notice to DOE prior to the end of the review/comment period On or before the close of the review/comment period, the Lead Regulatory Agency shall transmit their written comments to the DOE Comments on documents pertaining to specific OUs shall be transmitted in accordance with paragraph D of Part 11

N Representatives of the DOE shall make themselves readily available to the EPA or the State during the review/comment period for purposes of informally responding to questions and comments on documents Oral comments made during such discussions need not be the subject of a written response by the DOE at the close of the review/comment period

O In commenting on a document which contains a proposed ARAR determination, the Lead Regulatory Agency shall include a reasoned statement of whether it objects to any portion of the proposed ARAR determination To the extent that the Lead Regulatory Agency objects, they shall explain the basis for their objection in detail and shall identify any ARARs which they believe were not properly addressed in the proposed ARAR determination

P Following the close of the review/comment period for a document, the DOE shall give full consideration to all written comments on the document submitted during the review/comment period Within ten (10) days of the receipt of comments on a secondary document, the DOE shall submit to EPA and/or the State its written response to comments received within the review/comment period Within twenty (20) days of the receipt of comments on a primary document, the DOE shall transmit to EPA and/or the State the draft final primary document, which shall include DOE's response to all comments received within the review/comment period While the resulting draft final primary document shall be the responsibility of the DOE, it shall be the product of consensus, to the maximum extent possible

Q In cases involving complex or unusually lengthy documents, DOE may extend the time period(s) provided in Paragraph P for an additional thirty (30) days by providing notice to EPA and/or the State In appropriate circumstances, this time period may be further extended in accordance with Part 25 (Extensions) of this Agreement

R Project Coordinators may agree to extend by fifteen (15) days the period for finalization of the draft primary documents provided in Paragraph E as necessary for editing purposes

S Dispute resolution shall be available to the Parties for draft primary documents as set forth in Part 21 When dispute resolution is invoked on a draft final primary document, work may be stopped in accordance with the procedures set forth in Part 17 (Work Stoppage)

T The draft final primary document shall serve as the final primary document if no Party invokes dispute resolution regarding the document or, if invoked, at completion of the dispute resolution process should DOE's position be sustained If the DOE's determination is not sustained in the dispute resolution process, DOE shall prepare, within not more than sixty (60) days, a revision of the draft final primary document which conforms to the results of dispute resolution In appropriate circumstances, the revision time period may be extended in accordance with Part 25 (Extensions) of this Agreement

U Following finalization of any document pursuant to Paragraph T, any party to this agreement may seek to modify the document, including seeking additional field work, pilot studies, computer modeling, or other supporting technical work, only as provided in Paragraphs V and W

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V A Party may seek to modify a primary document after finalization if it determines, based on new information (i e , information that became available, or conditions that became known, after the document was finalized) that the requested modification is necessary A Party may seek such a modification by submitting a concise written request to the Project Coordinators of the other Parties The request shall specify the nature of the requested modification and the new information upon which the request is based

W In the event that Project Coordinators reach agreement on the modification, the modification shall be incorporated by reference and become fully enforceable under the Agreement pursuant to Part 26 (Amendment of Agreement) In the event that Project Coordinators do not reach agreement on the modification, any Party may invoke dispute resolution as provided in Part 21 to determine if such modification shall be made Modifications of a document shall be required upon showing that (1) the requested modification is based on significant new information, and (2) the requested modification could be of significant assistance in evaluating impacts on the public health or welfare or the environment, in evaluating the selection of remedial alternatives, or in protecting human health and the environment

X Nothing in this Part shall alter either EPA's or the State's ability to request the performance of additional work pursuant to Part 24 (Change Control Process) of this Agreement which does not constitute modification of a final document

Y DOE shall retain the right to request specific guidance (e g technical memoranda) from either EPA or the State regarding performance of work under this Agreement Unless the Parties involved mutually agree to another date, all documents of this type shall be subject to a fifteen (15) day response period

PART 21 RESOLUTION OF DISPUTES

A If a dispute arises under this Agreement, the procedures of this Part shall apply, unless otherwise expressly dealt with in this Agreement It is the intent of the Parties to informally resolve issues at the Operating Unit Manager or Project Coordinator level, and that Parties shall invoke Dispute Resolution only for significant issues The Parties agree to utilize the dispute resolution process only in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used

B If any Party objects to any action taken by another Party, the Project Coordinator of the disputing Party shall submit to the other Project Coordinators within 14 days of such disputed action, a draft of a Written Statement of Dispute, setting forth the nature of the dispute, the disputing Party's position with respect to the dispute, and the information relied upon to support its position The Parties agree to raise disputes within fourteen days of any disputed action, however, failure to raise a dispute within this timeframe shall not affect any remedial/corrective action selection authorities pursuant to Chapter 2

C If the Project Coordinators are unable to informally resolve such dispute within fourteen (14) days of receipt of the draft notices described above, the Project Coordinator of the disputing Party shall draft a written statement describing the issues underlying the dispute and attempts to resolve the dispute, and shall provide this statement along with the formal Written Statement of Dispute to the Dispute Resolution Committee (DRC) by the end of the 14 day period The DRC will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution

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D The State designated member of the DRC is the Chief of the Hazardous Waste Control Section DOE's designated member of the DRC is the Assistant Manager for Environmental Management, Rocky Flats Field Office The EPA member of the DRC is the Region VIII Hazardous Waste Management Division Director Written notice of any delegation of authority from a Party's designated DRC member shall be provided to the other Parties, pursuant to the procedures of Part 29 (Notification) The DRC shall have 21 days from receipt of the Written Notice of Dispute and statement described in paragraphs B and C to unanimously resolve the dispute and issue a written decision If the DRC is unable to unanimously resolve the dispute within this 21-day period, the Written Statement of Dispute and statement shall be forwarded along with any supporting information to the Senior Executive Committee (SEC) for resolution

E The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC The State's representative on the SEC shall be the Assistant Director for the Office of Health and Environmental Protection of the Department of Health (Assistant Director) The EPA's representative on the SEC is the Regional Administrator of EPA's Region VIII The DOE's representative on the SEC is the Manager, Rocky Flats Field Office

F The SEC members shall as appropriate, confer, meet, and exert their best efforts to resolve the dispute and issue a written decision If unanimous resolution of the dispute is not reached within 21 days, the Assistant Director shall issue a written final position for disputes arising at the State-lead OU's, and the EPA Region VIII Administrator shall issue a written final position for disputes arising at EPA-lead OU's The decision of the State Director shall in no way impair or limit EPA's responsibilities for oversight pursuant to Federal authorization of the hazardous waste program(s) If their is disagreement between the Administrator and the Assistant Director regarding a final written decision within twenty-one (21) days of its issuance, the Administrator or Assistant Director, as appropriate, shall issue a written statement of position The DOE-RFFO Manager shall issue a written final position for disputes generated by the baseline change process and D&D actions

G Subject to Parts 20 (RCRA/CERCLA Reservation Of Rights) and 42 (Reservation Of Rights) the Parties shall be bound by and abide by all terms and conditions of any final resolution of dispute obtained pursuant to this Part

H The pendency of any dispute under this Chapter shall not affect DOE's responsibility for timely performance of the work required by this Agreement, except that the time period for completion of work affected by such dispute, shall be extended for a period of time usually not to exceed the actual time taken to resolve any good faith dispute in accordance with the procedures specified herein, or as mutually agreed All elements of the work required by this Agreement which are not directly affected by the dispute shall continue and be completed in accordance with the applicable schedule

I Within 21 days of the final resolution of any dispute under this Part, DOE shall incorporate the resolution and final determination into the appropriate plan, schedule, or procedure(s) and proceed to implement this Agreement according to the amended plan, schedule, or procedure(s) DOE shall notify the other Parties as to the action(s) taken to comply with the final resolution of a dispute

PART 22 PROJECT BASELINE AND MILESTONES

A Establishing the Revised Agreement Baseline and Development of a New Statement of Work and Work Description Documents

1 A project baseline for environmental restoration activities at RFS has been established with the approval of all Parties The project baseline consists of three parts The technical baseline describes the Scope of Work in terms of performance, design requirements, criteria, and characteristics derived from DOE mission needs The schedule baseline is made up of activities, logic, constraints, milestones, assumptions, durations, and resources The cost baseline is established from cost estimating and resource loading of schedule baseline activities The cost baseline contains subproject direct and indirect budgeted costs, management reserve, and cost contingency, thus representing total project costs The baseline was established according to a set of planning assumptions that have been agreed to by the Parties and are incorporated into the Agreement as Attachment 5 The baseline is included in Attachment 2 and Tables 5 and 6 of Attachment 2

2 Included within the set of planning assumptions is the prioritization methodology that was utilized to establish the order by which the cleanup activities are to be completed The principal criterion for this prioritization methodology is the minimization of risk to human health and to the environment This priority will allow those activities covered by the RFCA to be managed to eliminate those items or sources of highest risk first, and defer those of marginal risk The prioritization of activities will determine which activities will be performed in a given time period if the funding allocated for that time period is limited

3 A revised baseline, consisting of the Statement of Work, Work Description Documents, and Schedule, has been prepared and is included as Attachment 2 and Tables 5 and 6 to Attachment 2 The Site Comprehensive and Specific OU Risk Assessments, as discussed in paragraph G of Part 12 (Work to be Performed Under Direction of Lead and Support Regulatory Agencies), will be utilized when available as guidance in determining the risk priorities of work activities

4 DOE shall perform activities according to the schedules set forth in the attached Statement of Work and the Work Description Document(s) developed thereunder The Parties agree that these schedules satisfy section 120(e)(1) of CERCLA RI/RFI and FS/CMS Schedules for each OU will be published by EPA and the State, as provided in section 120(e)(1) of CERCLA

5 DOE shall perform substantial continuous physical on-Site remedial action for each OU in accordance with section 120(e)(2) of CERCLA DOE shall complete the remedial action as expeditiously as possible, as required by CERCLA § 120(e)(3)

B Maintaining the Revised Agreement Baseline

The following paragraphs specify how the project baseline that was established in paragraph A will be maintained The involvement of the State and EPA in this effort occurs as delineated in the following paragraphs

1 The initial involvement is in the annual budget request process that occurs as part of the five-year activity data sheets (ADS) development This process takes place in the December through May timeframe each year During this period the regulators will be involved in the following activities:

a Participating and consulting with DOE for
   1 Definition of technical scope,
   2 Development of project assumptions,
   3 Prioritization of work scopes, and
   4 Development of long-range plan - ADSs This effort includes the reconciliation of the budget request based on the 5 year target guidance , if necessary

b Performing reviews and providing comments for
   1 The subcontractor annual budget request to be forwarded to DOE-RFFO, and
   2 The DOE-RFFO annual budget request to be forwarded to DOE-HQ

2 A second phase of involvement occurs in the May to September timeframe each year when the baseline is being refined at the work package level for activities that will take place in the next fiscal year During this period the regulators will be involved in the following activities

a Providing concurrence with
   1 Definition of technical scope,
   2 Development of project assumptions,
   3 Prioritization of work scopes

3 A third phase of involvement occurs in the October/November timeframe each year During this period the regulators will be involved in the following activities

a Participating with DOE in
   1 Reconciliation of the FY-1 scope and funding carryover,
   2 Reconciliation of the FY scope, schedule, and cost requirements, if applicable, based on the FY budget appropriation

b Approving the enforceable milestones for the current year (FY) If necessary, due to baseline changes, approval will be given to any revisions made to the enforceable milestones for the current year through FY+2 See paragraph C for a complete discussion of the process to be followed to establish milestones

4 Each year during the development of the activity data sheets for the next five-year period the prioritization methodology that was developed during the re-establishment of the technical baseline discussed in paragraph A will be reviewed and revised to reflect any changes that are deemed required due to experiences or events that have occurred in the past year The regulators will be involved in this review and re-prioritization of technical baseline

5 Changes to the baseline (work scope, cost and schedule, including planning and enforceable milestones) that are identified at any time shall be processed for approval by all Parties in accordance with Part 24 (Change Control Process) Any time a change is approved to the project baseline the impacted work activities will be re-prioritized and the associated enforceable milestones will be reestablished as appropriate Changes to existing enforceable milestones shall be governed by Part 25 (Extensions) The reprioritization of the baseline activities as workscopes are changed or new ones added will determine the work that will be scheduled in a given time period if the available funding is limited, diminished, or decremented

6 Amendments to the Attachment 2 Statement of Work, Work Description Documents (Table 5), and the Schedule (Table 6) resulting from changes to the project baseline will be in accordance with Part 26 (Amendment Of Agreement)

7 The regulators will be kept informed throughout the fiscal year through participation in the following activities and others which may occur as the need arises

- DOE-HQ Independent Cost Estimate (ICE) Reviews
- DOE-RFFO Independent Cost Estimate Reviews (ICER)
- EM-40 Project Validation (Self- Evaluation)
- Monthly DOE-RFFO Project Reviews
-

8 Nothing in this agreement shall affect DOE's intended separate interactions regarding the Project Baseline with States, EPA, public and other groups for the purpose of consultation and implementation

C Establishing Milestones

1 There are two types of milestones that will be established to govern environmental restoration work at Rocky Flats, long-range planning milestones and a current set of enforceable milestones Long-range planning milestones are milestones occurring outside the time period for which enforceable milestones have been established The current set of enforceable milestones consist of the current year's (FY) enforceable milestones, plus the milestones for the next two fiscal years (FY+1 and FY+2)

2 Enforceable milestones will represent only completion of major project phases (e g , draft scopes of work, Work Description Documents, RF/FSs and CAD/RODs) in the baseline

3 Enforceable milestones will be made only in the known planning horizon of the baseline This means that no enforceable milestones will be made for activities that are dependent upon a

Corrective Action Decision/Record of Decision Planning milestones will go beyond a Corrective Action Decision/Record of Decision The project baseline will clearly identify the assumptions on which planning and enforceable milestones are made Furthermore, enforceable milestones will apply to the delivery of draft primary or secondary (when deemed appropriate) documents and not the final drafts of these documents

4 Changes to planning and enforceable milestones will be governed by Part 24 (Change Control Process)

5 In the October/November timeframe each year, DOE will receive notice of the final Congressional funding decision for the current fiscal year The DOE financial plan will be revised to reflect this decision Within 5 days of receiving notification of the final budget number, DOE-RFFO will notify the State and EPA and request their involvement in the process described in paragraph B 3 of this part

PART 23 EMERGING WORK

THE MATERIAL IN THIS PART MAY BE AFFECTED BY THE D&D POLICY UNDER DEVELOPMENT BY DOE

A. It is recognized by all parties that the work scope covered by this Agreement will change as DOE's mission at Rocky Flats progresses In accordance with this mission, as described in Part 3 and Part 7 of this Agreement, emerging work originates from three basic categories

1 Surplus Facilities - DOE will operate various Site facilities including site infrastructure as necessary to support the site mission These facilities and infrastructure will remain under DOE control for operations and necessary house keeping activities until such time as DOE decides that a specific facility or infrastructure constituent is no longer required to support the Site mission When DOE determines that a facility has no further beneficial use to the DOE site mission, it may be declared surplus by DOE, and therefore, may be subject to remedial/corrective actions, as described in this Agreement Within 30 days of a surplus decision of this type, DOE will notify the parties of its intent to include Decommission and Decontamination (D&D) work into the project baseline These discussions will include designation of a Lead Regulatory Agency as described in Part 11 Based on agreements reached by parties during these discussions, baseline planning and change proposals will be submitted as appropriate The project baseline, including the newly emergent work, will be prioritized, as described in Part 22, (Project Baseline And Milestones), and new schedules for the baseline will be produced Depending on the priority of the emergent work, certain tasks in the baseline may be deferred, due to resource constraints

2 Emerging Information - A number of routine processes have the potential for creating the need for changes to the baseline These include, but are not limited to updates to the HRR, information obtained during the RFI/RI phase of remediation/corrective actions, or periodic reevaluation of the IHSS/OU groupings This information may indicate that certain changes to the project baseline are either advantageous or required As parties receive this informati , appropriate project coordination

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efforts will be made to make changes to the project baseline, in accordance with the provisions of Part 24, (Change Control Process)

3 Termination of Active Units - As the Site mission progresses, Active Units, as defined in Part 5 Definitions, shall be declared inactive, and thus available for closure When a mission decision of this type is made by DOE, parties shall meet within thirty days to discuss inclusion of closure work into the project baseline These discussions will include designation of a Lead Regulatory Agency as described in Part 11 Based on agreements reached by parties during these discussions, Work Description Documents will be submitted as described in Part 24, (Change Control Process) The project baseline, including the newly emergent work, will be prioritized, as described in Part 22, (Project Baseline And Milestones), and new schedules for the baseline will be produced Depending on the priority of the emergent work, certain tasks in the baseline may be deferred, due to resource constraints Until such time as the Active units are declared inactive, Parties will consider the use of IM/IRAs as described in Part 12, paragraph C

PART 24 CHANGE CONTROL PROCESS

A The Change Control Process is the mechanism used by the parties to assure that changes to the scope of work, including additional work, are reviewed for justification and impact in a structured manner that will assure all parties can exercise their responsibilities The process shall be disciplined and formal, assuring that change requests are accompanied by appropriate justification and that decisions are arrived at in specified time frame A change control procedure will be proposed by DOE and agreed to by all Parties within 30 days of the signing of this Agreement If the timeframes for review and approval of change requests are not met, the dispute resolution process of Part 21 is invoked

B In the event that any party to this Agreement determines that additional work, or modification to work, including investigatory work, engineering evaluation, and/or construction activities are necessary to accomplish the objectives of this Agreement, the change control process in this part shall be used

C Any change to the Project Baseline (technical, cost, or schedule) that results in a change to milestones identified in this Agreement will be subject to approval according to the change control procedure adopted in accordance with paragraph A of this part Changes may occur as a result of the following

1 Recommended changes to investigative scope (including the scope of constituents of interest) that might cause a change to project cost or schedule,
2 Recommended changes to treatment technologies that affect cost or schedule, or
3 Recommended new or emerging work including accelerated cleanup activities, that will affect the scope of, schedule for, or ability to fund existing on-going activities
4 Recommended changes to milestones when funding availability is not in agreement with project baseline cost projections, or
5 Recommended changes to the technical approaches and/or methodology which determines the technical baseline

D The Change Control Process begins with identification of need, as partially described above, by any party of this Agreement The Project Coordinator of the party requesting the change initiates the Change Control Process by informing the other Parties of the need for a change Changes proposed by any Party shall be accompanied by appropriate justification The essential element of this request is the justification for the change All proposed changes shall be forwarded by the Project Coordinator of the party requesting the change to the other two project coordinators The other two project coordinators shall have seven days to perform an initial review of the documentation and determine if the submittal is complete enough to continue the review If any party determines that the submittal is incomplete, a meeting shall be held within three days to discuss the submittal deficiency and to develop a plan of action to resolve it Based on the meeting results, the party sponsoring the proposed change shall provide a revised submittal The other two parties shall have 14 days to complete their review and issue a decision If there is disagreement with the proposal, the dispute resolution process described in Part 21, shall be used to resolve the disagreement If the change is agreed to, DOE shall initiate its internal Baseline Change Proposal process

E Any additional work or modification to work agreed to or determined to be necessary pursuant to the paragraph above, shall be completed in accordance with the standards, specifications, and schedule established in the amended Work Description Documents or other documents referenced in the preceding paragraph

PART 25 EXTENSIONS

A An enforceable milestone that is established according to the provisions of this agreement shall be extended upon receipt of a timely request for extension and when good cause exists for the requested extension The mechanism for requesting a milestone extension will be through the change control process described in Part 24 Any request for extension by any Party shall be submitted in writing via the Baseline change process and shall specify

1 The enforceable milestone that is sought to be extended
2 The length of the extension sought
3 The good cause(s) for the extension
4 Any related enforceable or planning milestone that would be affected if the extension were granted

B Good cause exists for an extension when sought in regard to

1 An event of Force Majeure
2 A delay caused by another Party's failure to meet any requirement of this Agreement
3 A delay caused by the good faith invocation of dispute resolution or the initiation of judicial action
4 A delay caused, or which is likely to be caused, by the grant of an extension in regard to another enforceable milestone
5 A change to a planning assumption that results from either a request by the State or the EPA, or is identified by DOE, but does not represent a failure of DOE or the contractor to properly manage the work
6 Any other event or series of events mutually agreed to by the Parties as constituting good cause

PART 26 AMENDMENT OF AGREEMENT

A. This Agreement may be amended by mutual agreement among EPA, the State, and DOE Such amendments shall be in writing and shall have as their effective date the date on which they are signed by all Parties, unless otherwise agreed, and shall be incorporated into this Agreement by reference Any dispute as to the need for the proposed amendment shall be resolved pursuant to Part 21 of this Agreement Should the Parties determine that an amendment to this Agreement is necessary, and the amendment would affect the CHWA permit for the Site, the State shall initiate appropriate permit modification procedures for that permit in accordance with its regulations

B Any noncompliance with amendments to this Agreement shall be considered a failure to achieve the requirements of this Agreement

PART 27 FIVE-YEAR REVIEW

A. Pursuant to CERCLA section 121(c), DOE agrees that EPA and the State will review any remedial action that results in any hazardous substances, pollutants, or contaminants remaining on-site, no less often than every five (5) years after the initiation of such final remedial action to assure that human health and the environment are being protected by the remedial action being implemented If upon such review it is the judgment of EPA, after consultation with the State, that additional action or modification of the remedial action is appropriate in accordance with section 104 or section 106 of CERCLA, EPA shall require DOE to implement such additional or modified action, notwithstanding Parts 25 or 27

B Any dispute by DOE or the State of the determination under this Part shall be resolved under Part 21 of this Agreement

PART 28 REPORTING

A. DOE shall submit to EPA and the State periodic written progress reports which describe the actions which DOE has taken during the previous period to implement the requirements of this Agreement Progress reports shall also describe the activities scheduled to be agreed to by all Parties The progress reports shall include

1 A detailed statement of the manner and extent to which the requirements and time schedules set out in this Agreement are being met
2 Any anticipated delays in meeting time schedules, the reason(s) for the delay, and action taken to prevent or mitigate the delay
3 Any potential problems that may result in a departure from the requests and time schedules

PART 29 NOTIFICATION

A. Unless otherwise specified, any report, document, or Submittal provided to EPA and the State pursuant to a schedule or deadline identified in or developed under this Agreement shall be sent by certified mail, return receipt requested, or hand delivered in duplicate to

Environmental Protection Agency, Region VIII
ATTN Rocky Flats Project Manager, 8HWM-RI
18th Street, Suite 500
Denver, Colorado 80202-2405
and

Hazardous Waste Facilities Unit Leader
Colorado Department of Health
E 11th Avenue
Denver, CO 80220

B Documents must be sent in a manner designed to be received by the date due

C Documents sent to DOE shall be addressed as follows unless DOE specifies otherwise by written notice

RFCA Project Coordinator
United States Department of Energy
Rocky Flats Field Office
Box 928
Golden, Colorado 80402-0928

D Unless otherwise requested, all routine correspondence may be sent via regular mail to the above-named persons

PART 30 PROJECT COORDINATORS

A. Within ten (10) days of the effective date of this Agreement, each Party shall notify all other Parties of the name and address of its Project Coordinator and Alternate (herein jointly referred to as Project Coordinator) Each Project Coordinator shall be responsible for overseeing the implementation of this Agreement To the maximum extent possible, all communications between DOE, the State, and EPA, and all documents including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Agreement shall be directed through the Project Coordinators

B Any Party may change its designated Project Coordinator by written notification to the other Parties

C Each Project Coordinator shall be responsible for assuring that all communication from the other Project Coordinators is appropriately disseminated and processed by the entities within the timeframes specified in this Agreement which the respective Project Coordinators represent

D The EPA-designated Project Coordinator shall have the authority vested in the Remedial Project Manager and the On-Scene Coordinator by the NCP including, but not limited to, the authority to direct DOE to halt, conduct, or perform any tasks required by this Agreement and any response action portions thereof when the EPA Project Coordinator determines that conditions may present an immediate risk to public health or welfare of the environment If EPA issues such verbal request, it shall follow up such request in writing within seven (7) days

E The State Project Coordinator shall be an employee of the Hazardous Materials and Waste Management Division of the Colorado Department of Health and shall have the authorities described in § 25-15-301(4)(a) of CHWA.

F EPA and State Project Coordinators shall have the authority to, among other things (1) take samples, obtain duplicate, split samples or sub-samples of DOE samples, (2) ensure that work is performed properly and pursuant to EPA and State protocols, as well as pursuant to the Attachments and Work Description Documents incorporated into this Agreement, (3) observe all activities performed pursuant to this Agreement, take photographs consistent with security restrictions, and make such other reports on the progress of the work as the Project Coordinator deems appropriate, (4) review records, files, and documents relevant to this Agreement, and, (5) require field modifications to the work to be performed pursuant to this Agreement, or in techniques, procedures, or design utilized in carrying out this Agreement, which are necessary to the completion of the project Field changes that affect project scope, cost or schedule will be subject to review and approval of the Change Control Process in Part 24

G The DOE Project Coordinator may also recommend and request non-routine field modifications to the work to be performed pursuant to this Agreement or in techniques, procedures, or design utilized in carrying out this Agreement which are necessary to the completion of the project The Lead Regulatory Agency, after consultation with the Support Regulatory Agency, must approve the proposed modification in writing for said modification to be effective Notification of routine field modifications shall be provided in the periodic progress reports required in Part 28 for the period immediately following the modification

H If agreement cannot be reached on the proposed additional work or non-routine field modification pursuant to paragraph F and G, dispute resolution as set forth in Part 21, may be used in addition to this Part Within five (5) business days following a modification made pursuant to this Part, the Project Coordinator who requested the modification shall prepare a memorandum detailing the modification and the reasons therefore and shall provide or mail a copy of the memorandum to the other Project Coordinators

I The DOE Project Coordinator or his designee shall be physically present at the Rocky Flats Site or reasonably available to supervise work performed at the Site during implementation of this Agreement

PART 31 SAMPLING AND DATA/DOCUMENT AVAILABILITY

A. DOE shall make available to EPA and the State quality-assured results of sampling, tests, or other data generated by DOE or on its behalf, with respect to the implementation of this Agreement as specified in the Statement of Work or subsequent Work Description Documents, as appropriate If quality assurance is not

completed within the time frames specified in the Statement of Work and subsequent Work Description Document(s), raw data or results shall be submitted upon the request of EPA or the State within that period and quality-assured data or results shall be submitted as soon as they become available

B DOE shall notify the EPA and State Project Coordinators by telephone, providing for sufficient time for EPA and the State to attend, before conducting independent verification, and shall provide a schedule for routine environmental sampling in the periodic progress reports required by Part 28 At the request of EPA or the State, DOE shall provide or allow EPA or the State or the authorized representative of each to observe field work and to take split or duplicate samples of all samples collected by DOE pursuant to this Agreement At the request of DOE, EPA and the State similarly shall provide or allow DOE or its authorized representatives to take split or duplicate samples of all samples collected by EPA or the State related to the Rocky Flats Site If it is not possible to provide the designated prior notification described above, the other Project Coordinators shall be notified as soon as possible after the other Parties become aware that samples will be collected but no later than 48 hours in advance Nothing in this part restricts the EPA's or State's right of access to the Site as discussed in Part 33

C DOE shall permit EPA, the State, or their authorized representatives to inspect and copy, at reasonable times, all records, files, photographs, documents, and other writing, including sampling and monitoring data, pertaining to work undertaken pursuant to this Agreement

PART 32 RETENTION OF RECORDS

A. DOE shall preserve, for a term consistent with the DOE records retention schedules then in effect at the termination of this Agreement, all of its records and documents in its possession or in the possession of its employees, agents, contractors or subcontractors which relate in any way to the presence of hazardous substances, pollutants, and contaminants at the Site Retention schedules for unscheduled records shall be developed and submitted to National Archives and Records Administration (NARA) for approval prior to termination of the Agreement Upon request by EPA or the State, DOE shall make available such records or documents to either party

PART 33 ACCESS

A. Without limitation on any authority conferred on EPA or the State by statute, regulation, or other agreement, EPA, the State, and/or their authorized representatives, with proper safety and security clearances, shall have authority to enter the Site at all reasonable times, with or without advance notification for the purposes of among other things

1 Inspecting records, operating logs, contracts, and other documents directly related to implementation of this Agreement
2 Reviewing the progress of DOE, or its response-action contractors in implementing this Agreement
3 Conducting such tests as the EPA or State Project Coordinator deems necessary
4 Verifying the data submitted to EPA and/or the State by DOE

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B DOE shall honor all requests for such access by EPA or the State, conditioned only upon presentation of proper credentials and conformance with Site security and safety requirements The latter may include dosimetry devices, training on Site safety features (such as alarms, barriers, and postings), and advance fittings for clothing and respiratory equipment as ordinarily required Escorts to restricted areas shall be assigned expeditiously by the Assistant Manager for Compliance, Rocky Flats Office

C To the extent that this Agreement compels access to property not owned by DOE, DOE shall use the maximum extent of its authority, including CERCLA section 104 authorities, to obtain access for DOE, EPA, the State, and their authorized employees and contractors DOE shall provide a copy of such signed agreements to EPA and the State With respect to non-DOE property upon which monitoring wells, pumping wells, treatment facilities, or other response actions are to be located, the access agreements shall also provide that no conveyance of title, easement, or other interest in the property shall be consummated without provisions for the continued operation of such wells, treatment facilities, or other response actions on the property The access agreements shall also provide that the owners of any property where monitoring wells, pumping wells, treatment facilities, or other response actions are located shall notify EPA, the State, and DOE by certified mail, at least 30 days prior to any conveyance, of the property owner's intent to convey any interest in the property and of the provisions made for the continued operation of the monitoring wells, treatment facilities, or other response actions installed pursuant to this Agreement

D In the event that Site access is not obtained as described in paragraph C above, DOE shall notify EPA and the State within 15 days regarding the lack of, and efforts to obtain, such access agreements Within 15 days of any such notice, DOE shall submit appropriate modification(s) to this Agreement in response to such inability to obtain access

PART 34 CONVEYANCE OF TITLE

A. No conveyance of title, easement, or other interest in the Rocky Flats Site on which any containment system, treatment system, monitoring system, or other response action(s) is installed or implemented pursuant to this Agreement shall be consummated by DOE without provision for continued maintenance of any such system or other response action(s) At least 30 days prior to any conveyance, DOE shall notify EPA and the State of the provisions made for the continued operation and maintenance of any response action(s) or system installed or implemented pursuant to this Agreement DOE shall also comply with the provisions of section 120(h) of CERCLA regarding any conveyance of title at the Site

B DOE's current mission for the Rocky Flats Site presents the possibility that title to portions or all of the existing Site, may be conveyed to other parties At least six months prior to those conveyances, DOE shall comply with the provisions of the Community Environmental Response Facilitation Act (CERFA), 42 U S C §9620(h)(4) DOE shall perform the proper environmental assessments in order to identify all uncontaminated property on the Site The results of this assessment shall be provided to the Regional Administrator for EPA Region VII (Regional Administrator) and the public DOE shall also submit such assessments for concurrence in the results to the Regional Administrator The Regional Administrator shall give such concurrence to DOE upon reasonable identification of such uncontaminated property Upon sale or other transfer of property identified as uncontaminated, DOE shall include in covenants required in CERFA

PART 35 FACILITY AND LAND AREA USE PLANNING

A DOE has implemented a facility and land area use planning program with community stakeholder involvement to collect the necessary information in order to make long term end use decisions on the various facilities and land areas that will no longer be needed by DOE to support the overall site mission It will be necessary for a sustained period of time to utilize various facilities and land areas to support those DOE programs which are necessary to complete all required missions for the Rocky Flats Site As a result, the facility and land use planning activity will be conducted on a phased basis Those buildings and land areas that will have interim uses (e g , storage of special nuclear material, storage of radioactive and/or hazardous waste, and economic development initiatives) will be scheduled for routine cleanup This cleanup will be performed to achieve human health and environmental risk levels that are appropriate for the activities that will be performed in those buildings or land areas These routine cleanup activities are not covered by this Agreement

B Currently, community involvement in facility reuse and land use planning issues at RF site is primarily facilitated through the Rocky Flats Local Impacts Initiative The following committees that address various aspects of facility reuse at RF site have been convened

1 Long Term Land and Facility Use Committee
2 Economic Development/Interim Reuse Committee

The above community stakeholder organizations will be kept advised on all planned interim and end uses of site facilities and land areas so that they can provide input into the decision making process As decisions on end point uses for facilities and land areas are made in the future, changes will be made in the planning assumptions for the baseline cleanup activities on individual land areas and facilities In particular, changes to the final cleanup standards will be made on the basis of achieving human health and environmental risk levels of cleanup that are compatible with the intended end use of the facility or land area so that the cleanup effort will be conducted in as cost effective manner as possible

C Prior to final decisions made through the process described in paragraph B, response actions can be taken as long as they do not preclude land use options under consideration

PART 36 PUBLIC PARTICIPATION/ADMINISTRATIVE RECORD

A DOE has developed and implemented a Community Relations Plan (CRP) which responds to the need for an interactive relationship with all interested community elements in the Rocky Flats area The plan was based on community meetings, and other relevant information including public comments received on this Federal Agreement and Consent Order The Plan addresses current and future activities and elements of work being undertaken by DOE DOE agreed to develop and implement the CRP in a manner consistent with sections 113(h) and 117 of CERCLA, 42 U S C Sections 9313(k) and 9617, relevant community relations provisions of the NCP, EPA policy and guidance (including but not limited to EPA OSWER Directive 2903 03C, Community Relations in Superfund A Handbook, January, 1992, and any modifications thereto), DOE policy and guidance, State statutes, regulations, and guidance identified in the Community Relations Plan, and the

Statement of Work attached hereto in Attachment 2 The CRP was be reviewed in accordance with the requirements of the Statement of Work Community involvement activities are conducted by DOE in consultation with EPA and the State

B Except in case of an emergency or the need for the public to receive information immediately, any Party issuing a formal press release to the media regarding any of the work required by this Agreement shall advise the other Parties of such press release, and the contents thereof, at least 48 hours before the issuance of such press release and of any subsequent changes prior to release

C DOE established and is maintaining Administrative Record files for CERCLA response actions at or near the Site in accordance with section 113(k) of CERCLA The Administrative Record files and resultant Administrative Records shall be established in accordance with EPA policy and guidelines Any future changes to these policies and guidelines affecting DOE's maintenance of the Administrative Record files shall be discussed by the Parties and an agreement will be reached on how best to accommodate those changes DOE shall maintain the master copy of the Administrative Record files at or near the Rocky Flats Site The Administrative Record files and final Administrative Records shall be established and maintained by DOE's Environmental Restoration Department The master copies are not required to be accessible to the public The master copies will be maintained specifically to ensure the integrity of the documents There are four (4) additional locations for the pubic to view the Administrative Record files The repository copies of the Administrative Record files may be supplied in microfilm, electronic format, optical format, or any other format or media which will allow access to a reasonable facsimile of the original documents Each repository will also house equipment to facilitate the viewing and reproducing documents contained in the Administrative Record files These repositories are as follows

Rocky Flats Reading Room
Front Range Community College
3645 W 112th Avenue
Library
Westminister, Colorado 80030
(303) 469-4435

Colorado Department of Health
4210 East 11th Avenue
Room 351
Denver, Colorado 80220
(303) 331-4830

Citizens Advisory Board
9035 Wadsworth Parkway
Suite 2250
Westminister, Colorado 80021

U S Environmental Protection
Agency
Superfund Documents Room
5th Floor
999 18th Street
Denver, Colorado 80202
(303) 293-1444

At least one copy of the Administrative Record shall be accessible to the public at times other than normal business hours

D The Administrative Record developed by DOE, including copies maintained at the Front Range Community College, the Colorado Department of Health, the Citizens Advisory Board and the U S Environmental Protection Agency, shall be updated by DOE on at least a quarterly basis The Administrative Record files shall be established and maintained for each OU and for sitewide activities An index of documents in the complete Administrative Record files will accompany each update to the Administrative Record files Documentation on issues giving rise to decisions from dispute resolution procedures of Part 21, and decisions themselves, shall be included in the Administrative Record files

E EPA, after consultation with the State when necessary, shall make the final determination of whether a document is appropriate for inclusion in an Administrative Record EPA and the State shall participate in compiling the Administrative Records by submitting documents to DOE as EPA and the State deem appropriate DOE shall include these documents in the Administrative Record files Every Administrative Record file will be reviewed by DOE, EPA, and the State before the file is closed at the signing of the decision document

PART 37 DURATION/TERMINATION

A Upon satisfactory completion of a remedial action phase at a given OU, as identified in the Statement of Work, the Lead Regulatory Agency shall issue a Notice of Completion to DOE for that OU At the discretion of the Lead Regulatory Agency, a Notice of Completion may be issued for completion of a portion of the response action for an OU

B This Agreement shall terminate by written notice from EPA and the State to DOE when DOE has satisfactorily completed all work pursuant to this Agreement and the Statement of Work and subsequent Work Description Document(s) as determined by EPA and the State or when the Parties unanimously agree to termination

PART 38 SEVERABILITY

A If any provision of this Agreement is ruled invalid, illegal, or unconstitutional, the remainder of the Agreement shall not be affected by such ruling

PART 39 CLASSIFIED AND CONFIDENTIAL INFORMATION

A Notwithstanding any provision of this Agreement, all requirements of the Atomic Energy Act of 1954 as amended, and all Executive Orders concerning the handling of unclassified controlled nuclear information, restricted data, and national security information, including "need to know" requirements, shall be applicable to any access to information or facilities covered under the provisions of this Agreement EPA and the State reserve their right to seek to otherwise obtain access to such information or facilities when it is denied, in accordance with applicable law

B Any Party may assert on its own behalf, or on behalf of a contractor, subcontractor, or consultant, a confidentiality claim or privilege covering all or any part of the information requested by this Agreement, pursuant to 42 U S C § 9604 and State law Except as provided in paragraph A, analytical data shall not be claimed as confidential Parties are not required to provide legally privileged information At the time any

information is furnished which is claimed to be confidential, all Parties shall afford it the maximum protection allowed by law If no claim of confidentiality accompanies the information, it may be made available to the public without further notice

PART 40 RESERVATION OF RIGHTS

A. The Parties have determined that the activities to be performed under this Agreement are in the public interest Except as provided in paragraph E, EPA and the State agree that compliance with this Agreement shall stand in lieu of any administrative and judicial remedies against DOE, that are available to EPA and the State regarding the currently known release or threatened release of hazardous substances, hazardous wastes, pollutants, hazardous constituents, or contaminants at the Site that are the subject of the activities being performed by DOE under Part 12 (Work To Be Performed Under Direction Of Lead And Support Regulatory Agencies) Provided that nothing in this Agreement shall preclude EPA or the State from exercising any administrative or judicial remedies available to them under the following circumstances

1 In the event or upon the discovery of a violation of, or noncompliance with, any provision of RCRA or CHWA including any discharge or release of hazardous waste which is not addressed in the Statement of Work or subsequent Work Description Documents

2 Upon discovery of new information regarding hazardous substances or hazardous waste management including, but not limited to, information regarding releases of hazardous waste, hazardous constituents, or hazardous substances which is not addressed in the Statement of Work or subsequent Work Description Documents

3 Upon the State's or EPA's determination that such action is necessary to abate an imminent and substantial endangerment to the public health, welfare, or the environment

B For matters within the scope of this Agreement, the State and EPA reserve the right to bring any enforcement action against other potentially liable parties, including contractors, subcontractors and/or operators, if DOE fails to comply with this Agreement For matters outside this Agreement, and any actions related to costs or funding, EPA and the State reserve the right to bring any enforcement action against other potentially liable parties, including DOE's contractors, subcontractors and/or operators, regardless of DOE's compliance with this Agreement

C This Agreement shall not be construed to limit in any way the right provided by law to the public or any citizen to obtain information about the work under this Agreement or to sue or intervene in any action to enforce State or Federal law

D Except as provided in paragraph A, DOE is not released from any liability which it may have pursuant to any provisions of State and Federal law, nor does DOE waive any rights it may have under such law to defend any enforcement actions against it

E DOE is not released from any claim for damages for injury to, destruction of, or loss of natural resources pursuant to § 107(a)(4)(c) of CERCLA

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F EPA and the State reserve all rights to take any legal or response action for any matter not specifically part of the work covered by this Agreement

G Nothing in this Agreement shall be construed to affect any criminal investigations or criminal liability of any person(s) for activities at the Site However, compliance with an EPA directive pursuant to this Agreement shall constitute an affirmative defense for any matter related to that compliance

H Notwithstanding this Part or any other Part of this Agreement, the State reserves any rights it may have to seek judicial review of an interim or final remedial action in accordance with sections 113, 121 and 310 of CERCLA, 42 U S C §§ 9613, 9621 and 9659, but agrees to employ the appropriate dispute resolution process prior to seeking judicial review

I The State also reserves any rights it may have to seek judicial review of any ARAR determination in accordance with sections 121 and 310 of CERCLA.

J The Parties reserve their rights to challenge any decision affecting remedy selection under all applicable Laws consistent with Part 19 (RCRA/CERCLA Reservation Of Rights)

PART 41 FORCE MAJEURE

A. A Force Majeure shall mean any event arising from factors beyond the control of a Party that causes a delay in, or prevents the performance of, any obligation under this Agreement, including, but not limited to, acts of God, fire, war, insurrection, civil disturbance, explosion, unanticipated breakage or accident to machinery, equipment or lines of pipe despite reasonably diligent maintenance, adverse weather conditions that could not reasonably be anticipated, restraint by court order or order of public authority, inability to obtain, consistent with statutory requirements and after exercise of reasonable diligence, any necessary authorizations, approvals, permits, or licenses due to action or inaction of any governmental agency or authority other than the DOE, and delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence A Force Majeure shall also include any strike or other labor dispute not within the control of the Parties affected thereby Force Majeure shall not include increased costs or expenses of response actions, whether or not anticipated at the time such response actions were initiated

PART 42 RECOVERY OF EPA EXPENSES AND STATE COSTS

A DOE agrees to reimburse the State and EPA for all administrative costs incurred respectively that specifically relate to the implementation of this Agreement at the Rocky Flats Site and not inconsistent with the NCP, to the extent such costs are not covered by permit fees and other assessments, or by any other agreement between the Parties The amount and schedule of payment of these costs will be negotiated based on anticipated needs and in consideration of DOE's multi-year funding cycle The State and EPA reserve all rights they have to recover any other past and future costs in connection with CERCLA activities conducted at the Rocky Flats Site For the purposes of budget planning only the State and EPA shall annually provide DOE, before the beginning of the fiscal year, a written estimate of

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projected costs to be incurred in implementing this Agreement in the upcoming fiscal year A separate funding agreement between DOE and the State and between DOE and EPA will be executed within 90 days after the Parties execute this Agreement, which shall be the specific mechanism for the transfer of funds (e g a grant) between DOE and the State for payment of the costs referred to in this paragraph

B EPA and DOE recognize that in order to fully implement this Agreement, the costs of both Parties must be adequately funded Therefore, DOE agrees to use its best efforts to assist EPA to obtain adequate funds and Full Time Equivalent (FTE) positions to provide timely response and competent oversight, and EPA agrees to use its best efforts to assist DOE to obtain adequate funds for implementing the activities mandated by this Agreement, including the Statement of Work and subsequent Work Description Documents

C DOE agrees to pay the State, in full, and no later than 30 days after receipt of invoice, all document review fees and annual waste fees as required by 6 CCR 1007-3, Part 100 3, consistent with § 6001 of RCRA In the event DOE disputes any such charges by the State, DOE may contest the disputed charges in accordance with the Dispute Resolution procedures of Part 21

PART 43 FUNDING

THIS SECTION REPRESENTS THE ORIGINAL IAG WORDING. THIS PART WILL BE REVISED PRIOR TO NEGOTIATIONS.

A. It is the expectation of the Parties that all obligations of DOE arising under this Agreement will be fully funded DOE shall take all necessary steps and use its best efforts to obtain timely funding to meet its obligations under this Agreement, including but not limited to budget requests supported by DOE's Environmental Restoration and Waste Management Five Year Plan

B The activities and related milestones in the Five-Year Plan shall be consistent with the provisions, including requirements and schedules, of this Agreement, it is the intent of DOE that the Five-Year Plan shall reflect the provisions of this Agreement Any amendments to this Agreement will be incorporated, as necessary, in the annual updates of the Five-Year Plan To support the annual updates of the Five-Year Plan that are consistent with the provisions of this Agreement, the State and EPA shall assist DOE in determining the activities and corresponding work schedule for each fiscal year in the following manner

1 DOE shall develop its Activity Data Sheets (ADS) for the Rocky Flats Site compliance and cleanup activities in consultation with the State and EPA. This information shall be provided to the State and EPA for the purpose of reaching agreement on the activities to be included in the period addressed by each annual update of the Five-Year Plan

2 DOE agrees to meet and confer with the State or EPA, at the request of either, up to and including the point at which the ADSs are submitted to DOE Headquarters for validation

3 DOE also agrees to meet and confer with the State and EPA during the development of the implementation plans for each update of the Five-Year Plan, prepared on an annual basis to address the budget request year and subsequent four year period

4 Subsequent to receipt of Congressional appropriations by DOE, DOE agrees to meet and confer with the State and EPA during any revision to the Rocky Flats Site implementation plans associated with the annual update of the Five-Year Plan where such revisions are necessitated by differences in appropriated funding from that identified in the budget request This consultation would be dependent upon the timing of the Congressional action

5 Nothing in this Agreement shall affect DOE's intended separate interactions on the Five-Year Plan with States, EPA, public and other groups for the purposes of consultation and implementation

C In accordance with section 120(e)(5)(B) of CERCLA, 42 U S C § 9620(e)(5)(B), DOE shall include in its Annual Report to Congress the specific cost estimates and budgetary proposals associated with the implementation of this Agreement, including any EPA and State cost estimates, and shall justify any discrepancies between EPA, State, and DOE estimates

D If appropriated funds are not available to fulfill DOE's obligations under this Agreement, EPA and the State reserve the right to initiate any other action either Party deems appropriate Initiation of any such action shall not release DOE from its obligations under this Agreement

E EPA and DOE agree that any requirement for the payment or obligation of funds including stipulated penalties under Part 15 (Stipulated Penalties) of this Agreement by DOE, established by the terms of this Agreement, shall be subject to the availability of appropriated funds, and no provision herein shall be interpreted to require obligation or payment of funds to pay EPA-assessed stipulated penalties in violation of the Anti-Deficiency Act, 31 U S C § 1341, in cases where payment or obligation of such funds shall be appropriately adjusted

F If appropriated funds are not available to fulfill DOE's obligations under this Agreement, the Parties shall attempt to agree upon appropriate adjustments to the dates which require the payment or obligation of such funds If no agreement can be reached, then the State and DOE agree that in any action by the State against DOE to enforce any provision of this Agreement, DOE may raise as a defense that its failure or delay was caused by the unavailability of appropriated funds The State disagrees that lack of appropriations or funding is a valid defense However, DOE and the State agree and stipulate that it is premature at this time to raise and adjudicate the existence of such a defense Acceptance of this paragraph does not constitute a waiver by DOE that its obligations under this Agreement are subject to the provisions of the Anti-Deficiency Act, 31 U S C § 1341

PART 44 COMPLIANCE WITH APPLICABLE LAWS

A. All actions required to be taken pursuant to this Agreement shall be taken in accordance with the requirements of all applicable Federal and State laws and regulations All Parties acknowledge that such compliance may impact schedules to be performed under this Agreement Extensions of schedules, when necessary, shall be provided in accordance with Part 25 (Extensions)

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PART 45 OTHER CLAIMS

A. Nothing in this Agreement shall constitute or be construed as a bar or release from any claim, cause of action, or demand in law or equity by or against any person, firm, partnership, or corporation, including any DOE or predecessor agency contractor, subcontractor, and/or operator, either past or present, for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Rocky Flats Site

B This Agreement does not constitute any decision on pre-authorization of funds under section 111(a)(2) of CERCLA, 42 U S C § 9611(a)(2)

C Neither EPA nor the State shall be held as a party to any contract entered into by DOE to implement the requirements of this Agreement

PART 46 PUBLIC COMMENT/EFFECTIVE DATE

A. This Agreement has undergone a 60 day public review and comment period The Parties have responded to public comments received during the public comment period in a separate document entitled "Responsiveness Summary for Rocky Flats Federal Facility Agreement and Consent Order" and have made numerous revisions to this Agreement as a direct result of those public comments

B The effective date of this Agreement shall be the date on which the last party signs this Agreement

IT IS SO AGREED:

Each undersigned representative of a Party certifies that he or she is fully authorized to enter into this Agreement and to legally bind such Party to this Agreement

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

_____ Date _____

Regional Administrator, Region VIII
U S Environmental Protection Agency

FOR THE UNITED STATES DEPARTMENT OF ENERGY:

_____ Date _____

STATE OF COLORADO DEPARTMENT OF HEALTH:

_____ Date _____